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THE DEVELOPMENT OF A RESEARCH AGENDA ON WHITE-COLLAR CRIME

Herbert Edelhertz
PRINCIPAL INVESTIGATOR

Thomas D. Overcast
RESEARCH SCIENTIST

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Battelle
Human Affairs Research Centers
4000 N.E. 41st Street • Seattle, Washington 98105

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Battelle Project Staff:

Herbert Edelhertz
Project Director

Thomas D. Overcast
Research Scientist

Contributors:

Simon Dinitz
M. David Ermann
Gilbert Geis
Richard J. Lundman
Robert F. Meier
James F. Short, Jr.
Edwin H. Stier
Ezra Stotland
John M. Thomas

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TABLE OF CONTENTS

PREFACE AND ACKNOWLEDGMENTS

The public, government agencies, and the research community have become increasingly aware of white-collar crime in recent years. The special challenges of white-collar crime are perceived by the public and government in terms of economic losses, inflated costs, and threats to the integrity of marketplace and government activities. The research community shares these perspectives, but must also face the many complexities involved in any scholarly response, such as definition of the problem, the absence of methodological approaches of proven use in this field, difficulties of data collection, and data which uniquely lack comprehensiveness because of the essentially covert nature of white-collar crime. This work was commissioned by the National Institute of Justice to assist the efforts of researchers from all disciplines who seek to make their contributions to our knowledge of white-collar crime.

Many individuals contributed to this work. We hope that we may be forgiven for any we have inadvertently overlooked. First, we recognize the support of those who prepared the papers which are the major part of this document, reviewed and critiqued all aspects of this work, and gave so much of themselves in the colloquium which was the center of this effort. Professor Gilbert Geis of the University of California at Irvine and Professor Simon Dinitz of Ohio State University merit special mention among the authors of these papers for their guidance and advice on the organization and agenda of the colloquium. The colloquium owed much to the presence of those who participated in its deliberations, who are listed in Appendix A of this document and whose observations were of great value to us. Mr. Thomas Clay, a graduate student at the University of California at Irvine, prepared the initial draft for the bibliography of recent literature which is a part of this report.

We are particularly grateful to Mr. Bernard Auchter and Dr. Fred Heinzelmann of the Community Crime Prevention Division of the National Institute of Justice. Mr. Auchter, the National Institute's project monitor, and Dr. Heinzelmann who is the Division's director, gave unstintingly of their time and effort to ensure the success of this project. We particularly acknowledge their many substantive contributions to this work.

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Herbert Edelhertz
Thomas D. Overcast

Battelle Human Affairs Research Centers
Seattle, Washington

I. INTRODUCTION

Herbert Edelhertz
Battelle Human Affairs Research Centers

A. Issues

1. Problems of research. The study of white-collar crime presents unique challenges to those who undertake it. There are problems of definition and of data availability and interpretation. Compared to other areas of criminological inquiry, this is a new field which only began to be seriously cultivated after Sutherland captured researcher attention through the force of his presentation and analysis of the issues in 1940.[1] There was a long period of "dead time" between 1940 and the early 1970's, during which only limited though, in some instances, significant attention was given to white-collar crime by the criminological community.[2]

Another complicating factor has been, and continues to be, that different disciplines and interest groups examine white-collar crime issues through their own lenses, with little or no awareness of the relevance and importance of other perspectives. Legal scholars have analyzed white-collar crime issues as part of their studies of criminal law, administrative law, government regulation, and consumer law. The accounting profession has studied these issues in narrow terms of internal auditing and investigative accounting theory and practice, though the recent vulnerability of accountants to civil and criminal liability for the manner in which they conduct their practices has now caused them to adopt broader perspectives.[3] Policy analysis, as an emerging discipline, is only now making its presence felt in this field.[4] Enforcement agencies have engaged in applied research, including studies of patterns of violations as bases for deterring potential violators or zeroing in on likely candidates for audit or investigation by the Internal Revenue Service; and analyses by the U.S. Department of Health, Education and Welfare of payments to Medicaid providers as a guide to targeting of fraud violators.

Research on white-collar crime issues has proven to be resistant to organization in a clear conceptual framework because those who work in the field have been unable to agree on the character and nature of behavior to be studied.[5] Political and ideological currents have broad and deep influences here.[6] There is strong disagreement, for example, as to whether wrongful behavior is to be defined in terms of the status of the offender, the characteristics of his or her

behavior, or the harm (actual or potential) inflicted on the victims.[7]

2. White-collar crime data. There is a marked paucity of reliable information on the impact or costs of white-collar crime, even with respect to specific and narrowly defined crimes, although there is great demand for such information.[8] The National Institute of Justice has taken a first step toward filling this gap through its support of a study of federal level sources of data on white-collar crime law breaking which was recently completed under a grant to the Bureau of Social Science Research,[9]. The Battelle Law and Justice Study Center, under a grant from the National District Attorneys Association, is currently collecting and analyzing data on investigations and prosecutions of such crime in a number of local prosecutors' offices.[10] The Federal Justice Research Program of the U.S. Department of Justice is now preparing to commission a study to gather information on the incidence and impact of white-collar crime.[11]

Until recently, researchers have failed to tap many sources of data which could shed light on the numerous issues posed by white-collar criminal behavior. There have been specific case studies--for example Herling's involving the Electrical Price Fixing Conspiracy,[12] Susan Shapiro's study of enforcement by the U.S. Securities and Exchange Commission,[13] and the recently completed Clinard study of corporate crime[14]--many supported by the National Institute of Law Enforcement and Criminal Justice. In addition, some of the most significant work in this field has been done by journalists and investigative reporters.[15]

It is noteworthy that until very recently there were few links between the research and action communities (police, investigators, prosecutors, regulators, compliance staffs, etc.). This is in sharp contrast to other areas of criminological inquiry, such as corrections and juvenile delinquency, where data have been consistently collected, analyzed, and reported back to user communities, and where knowledge acquired could be specifically organized for use in the training of professional staffs and in the implementation of their day-to-day working tasks. Those engaged in white-collar crime containment efforts, such as prevention, detection, investigation, prosecution, and regulation, have only within the past few years become aware of the existence of consistent research interest in their endeavors.

3. Growth of research interest. Opportunities for research have expanded with the growth of strong media and public interest in white-collar crime. This was fueled in the first instance by the consumerism movement and the Watergate episode. Momentum was maintained and even increased

thereafter. In part, this increase is due to some sense of the inequity reflected by the existence of different standards for prosecution and punishment of "common" and of white-collar criminals. But perhaps more significant have been new concerns with the integrity of costly government benefit and subsidy programs afflicted with patterns of fraud, waste and abuse; with public corruption; with the abuses of power inherent in looting of pension funds; with patterns of commercial bribery, which raise widespread questions as to the ethics of the business community; with recognition of links between white-collar and organized crime; with disclosures of fraud and corruption in the procurement of goods and services by public agencies; with media attention to conflicts of interest by those in positions of power in the corporate world and in public agencies; with public consciousness of tax frauds which unfairly shifted economic burdens; with (justified or unjustified) concern that shortages of energy were being fraudulently exploited; with growing sensitivity to hidden taxes imposed on the public by monopolistic and price-fixing activities; with white-collar criminal behavior used to circumvent public programs to protect our health and environment; with threats to the health of urban environments posed by arson-for-profit; and with crimes arising out of new technologies such as electronic fund transfers and computer applications.

4. The need for white-collar crime research. Government and private sector planning and decision making to contain white-collar crime in these and related areas, will require firmer bases of knowledge than now exist. Who are the perpetrators and who are the victims? What are the dimensions in dollar terms of harm inflicted? What harm is done indirectly through undercutting the integrity of our institutions, and by use of the techniques of white-collar crime to facilitate damage to our environment and to affect our individual health and well-being?

Are the resources marshalled to deal with white-collar crime appropriate to the challenge it presents, and are personnel and money deployed in a manner rationally calculated to achieve maximum containment of such crime? Do public agencies have the information they need to demonstrate that the benefits of white-collar crime containment efforts justify the cost? As we plan for future public action in this area, decisions must be made whether government will respond with criminal, civil, or regulatory remedies, or with some mix of these. Even now, as public programs are designed and legislation enacted to implement them, there is intense debate as to the appropriateness of particular remedies--arguments which are conducted without any respectable base of knowledge to illuminate the debate. Enforcement activities are similarly designed without any comprehensive grounding in systematically developed information, and in reliance largely only on

impressionistic data. There are ongoing moves to develop and implement a rational approach to white-collar crime containment involving federal-state-local steps toward a "national strategy,"[16] and there also is congressional interest in providing support to a vigorous national enforcement program,[17] but progress along such lines is badly hampered by the absence of an adequate base of knowledge.

5. Transnational white-collar crime. Our national economy is more and more intertwined with those of other nations, and it is not surprising that there is heightened consciousness of white-collar crime in the world community. White-collar crime issues were addressed as one aspect of "abuse of power" at the United Nations' Congress on Criminology held in Caracas, Venezuela, in August, 1980, following earlier work done for the U.N. by di Gennaro and Vetere[18] and a preliminary meeting of persons working in the subject area held at U.N. Headquarters in New York in July, 1979.

At U.N. meetings major attention was given to the wielding of economic power by large transnational enterprises. It is perhaps more important that criminological and policy planning researchers address problems arising out of the structure and increasing magnitude of international trade, the vulnerability of domestic institutions to white-collar crimes managed from abroad, and the dilemmas posed by conflicting national laws, interests, and mores.[19] In adopting such a broader view of transnational white-collar crime, it must be recognized that these conflicting laws, interests, and mores are unique cultural features which must be respected.

6. White-collar crime remedies. Finally, any effort to deal with white-collar crime comprehensively must consider the interrelated issues of equity and sentencing. There is a widespread impression that white-collar offenders are rarely charged with criminal violations, and that the entire weight of the criminal justice system is directed with bias against the crimes of the poor and disadvantaged.[20] Recent observations by those active in enforcement indicate that prosecutors have become more willing to prosecute white-collar offenses and our courts to impose prison terms on those convicted of these offenses.

Nevertheless, there exist numerous alternative remedies, in the form of regulatory and civil penalties, which provide law enforcement agencies with a rationale for not proceeding criminally, especially where agencies are overworked, cases are complex and time consuming, where offenders are powerful, or where there are conflicting interests.[21] If there is a criminal conviction, there does appear to be greater willingness to impose prison sentences, but dilemmas still exist. Can we apply conventional sentencing and correctional standards which

are geared to violent or other common crimes to white-collar offenders who are usually in court for the first time? How do we deal with the fact that a white-collar felon (who is not a career con-man) can walk the streets without endangering the public? Are prison sentences justified in white-collar crime cases on the theory of general deterrence alone, as many believe, where there is clearly no need to specifically deter the individual offender? How is probation to be monitored? How are publicly held corporations to be punished and deterred?

7. Conclusion. For those who study white-collar crime, or who commission or use studies in this field, these are but some of the issues they must consider. It is an illustrative rather than a comprehensive list. Even those who would agree with the relevance of each of the parts of the list hold different views about how the questions should be structured, and about their differing weight and importance. This report describes how these and related issues were considered during a colloquium designed to contribute to the development of a research agenda on white-collar crime.

B. Planning for a Research Agenda on White-Collar Crime

This document is not and was not planned to be a research agenda on white-collar crime, but rather as a contribution to the development of such an agenda. The plan was a simple one--to base this contribution on a preliminary weighing of what appeared to be central core issues in the field, to commission a series of papers to respond to these issues, and then to hold a colloquium at which the authors and others would use the papers as a springboard for wider-ranging examination of research needs in this field. The original plan--in large part, implemented--was to seek insights both from those who have conducted research on white-collar crime in the past and from others within and outside the research community. It was also planned to expose the work of the individual authors to examination by colloquim participants--the authors of commissioned papers and other researchers, potential users of research on white-collar crime, and the professional staffs of the National Institute of Justice and the U.S. Department of Justice who would be responsible for implementing plans for research in this field. To tie all this together, Professor Gilbert Geis of the University of California at Irvine was chosen to sum up the colloquium proceedings in closing remarks, and then to follow up with a paper which would be its own, self-standing contribution to this effort, and also would reflect his consideration of the discussions which had taken place.

1. Developing a candidate list of issues. The task of selecting topics to be addressed in colloquium papers was, we believe, a most constructive exercise. It required an inventory

not only of prospective issues, but also of all disciplines which might be brought together to provide the broadest possible perspectives. The result of this selection process (which involved the Battelle staff and its consultant, Professor Gilbert Geis, members of the staff of the Community Crime Prevention Division of the National Institute of Justice, plus comments from the staff of the Criminal Division of the U.S. Department of Justice) was the commissioning of six papers in five general areas. This was done with the understanding that those selected to prepare the papers would have their own appreciation of the subject matter and would be quite likely to see the selected topic in a very different light. This, in fact, is what happened in most instances.

The overall rationale for final selection of papers was that any research agenda must demonstrate the importance of the subject, consider the role of government in containing white-collar crime research, discuss characteristics of offenders, determine who can make research contributions, weigh possible remedies for wrongful behavior with which we were concerned, and undertake a comprehensive review of possible research contributors. The topics selected and authors who agreed to address them are discussed in the following section of this report.

2. Background issues. There were a number of significant topics which were not selected as a basis for papers to be commissioned. In the minds of those who were part of the selection process some were as important as any topics selected, but they were not chosen because an appropriate author could not be identified, or the subject matter overlapped another, or simply because choices had to be made. In many instances, omitted topics were reintroduced as part of the colloquium discussions. Some brief consideration of these topics is in order here so that they may be kept in mind as we go on to review the colloquium proceedings themselves.

Two suggested topics were somewhat outside the usual lists for discussion, but are nonetheless of long-range importance. The first is the role of ideology in white-collar crime research. It is noteworthy that the main focus of most research on white-collar crime, and of most conceptualizations of the problem, is on the crimes of the powerful, or at least of those in positions of trust and authority. This surfaces first and most powerfully with the work of Sutherland, and is still the dominating theme in the work of white-collar crime researchers. This can be seen in most of the papers which were presented at this colloquium. Even Geis, who has most critically dissected Sutherland's biases,[22] follows this path when in his paper he unhesitatingly characterizes antitrust violations and physician-Medicaid fraud as white-collar crime, but goes on to say that "cheating on applications for food stamps or welfare

payments by persons in the lower socio-economic strata also is not a clear contender for classification as white-collar crime."[23] Do we lose something, as researchers, when we make distinctions of this kind? Can we take the same crime, embezzlement, and call it "white-collar" when committed by the bank president but not by the teller? Where shall the line be drawn hierarchically between gradations of power and control? The standard of trust abused, so rightly cited by many of the authors of these papers as of crucial importance, can be applied at many levels. Is it not the presumption that honesty in applications for food stamps makes it possible for there to be as little red tape as there is? And when government's trust in the applicant is abused, do not the poor suffer even more from new controls which are imposed as a result? Where are the studies of recipient welfare fraud, of frauds by community groups entrusted with the dispensation of benefits? In large part, they appear to be left to auditors, journalists, and legislative committees.

A second suggestion outside the usual list was most intriguing--that we should address the philosophical aspects of white-collar crime: ethics, harm, and justice. Some white-collar crimes are malum in se, regarded as wrong in and of themselves. These were largely crimes at common law. Other white-collar crimes are punishable by imprisonment because laws have been enacted to channel behavior in certain ways, or because it is felt that certain harmful or undesirable behavior warrants such remedies. But do not underlying perceptions of ethics, harm and justice in fact determine how our laws are enacted and enforced in the area of white-collar crime? It is illegal to issue and sell securities under the Securities Act of 1933 without filing a registration statement with the U.S. Securities and Exchange Commission (SEC). A violation may be referred to the U.S. Department of Justice for prosecution, or the SEC may seek other remedies. As a practical matter, no one will be criminally indicted solely for his violation unless there was a wrongful intent to defraud or hurt the investing public. Most such charges are joined with fraud allegations, or stand alone when fraud was probably intended but the intent cannot be proved beyond a reasonable doubt. Just as many students in this field have considered the political or ideological bases for differential law enforcement policies,[24] we might understand far more about how laws proscribing white-collar crime are enacted or not enacted, or vigorously enforced or not, if we would address underlying ethical issues. Studies of public attitudes, as suggested by Meier and Short in their paper, could contribute valuable data for such research, but it is also intriguing to consider new and valuable insights which might come from philosophers and, yes, even theologians.

Another subject which should rank high on any agenda is the role and responsibility of the business community in containing

white-collar crime. We hear much today about corporate codes of ethics--thou shalt not pay bribes, nor use corporate money for political contributions, nor talk with thy competitor about what to charge the customer, nor collude with thy competitor to determine who will win a particular contract. These codes are printed in fancy booklets. The fact remains that crimes are committed by business and against business, as was noted in every paper prepared for this colloquium and in unnumbered past studies. Yet those white-collar criminal violations often are not reported by officials of the businesses involved, even where crimes are committed against them by their officers or employees. One can only speculate as to the reasons for cover-ups; there is no empirical evidence available. The disclosure of a white-collar crime may be quite embarrassing and hurt the reputation of the company. Higher level management may look negligent to stockholders and directors and lose their jobs, or see bonuses evaporate. Perhaps worse, the directors and officers may become defendants in stockholder derivative actions and suffer losses if their negligence is proved. Last but not least, on a simple cost analysis, management may determine that the expense of dealing with prosecutors and the time in court will make it a red ink-effort. How many corporate scoundrels have been allowed to resign and leave with honor?

The situation is far more complex where white-collar criminal activities are mounted on behalf of the employer, as in the case of antitrust, price-fixing, or environmental violations. What are the rationale which promote such activity? Corporate patriotism? The conception that it is the only way to do business? Another question for research by the philosopher-ethicist is how one distinguishes between "illegal" activities which are wrong and those which are not wrong.

In his paper, Geis refers to a meeting sponsored by accountants to consider white-collar crime issues.[25] The thrust of that meeting was how accountants could comport themselves and be protected against client fraud (which has resulted in accountants' convictions and substantial civil judgments against their firms). One federal law enforcement agency representative who was present, and in a particularly good position to know, was not aware of a single client white-collar crime ever reported by accountants/auditors; another former federal official knew of but one.

White-collar crime is in large part crime by, within, among, or against businesses. While it is vital that the research community study business criminality, as so often suggested in these colloquium papers and the discussions triggered by them, it is of equal or greater importance that we find ways to consider what businesses should do, and how they can meet their responsibilities in this field. What incentives and disincentives will best promote assumptions of

responsibility to control white-collar crime in the business community? This may be a field to which lawyers contribute by considering crime reporting statutes which have more teeth than existing misprision or compounding statutes.[26] It is also a major area for policy research. And, in considering the ways in which businessmen comport themselves, we should not overlook the roles of the supporting professions, such as accounting and law.

Evaluation of white-collar enforcement efforts received surprisingly little attention during this colloquium though it was given serious consideration as a possible separate colloquium subject. Evaluation issues are difficult at best in the field of criminal justice. They are even more complex in an area in which concealment is an essential element of the crime, where victims do not know they are victims in most instances, and where the line between the licit and the illicit is exceedingly hard to draw. These considerations may raise currently unbreachable barriers to development of baseline data on the incidence of white-collar crime, data which are so important in evaluation research. But there may be more elbow room for constructive evaluative studies of law enforcement activities in this field. The area is admittedly a muddy one. Numbers of investigations or prosecutions are not the key, because large numbers may mean that only "easy" cases are taken up, and that more significant matters are avoided. Other measures should be considered by evaluation researchers, such as demonstrations of deterrent effect, e.g., changes in industry practices. Major SEC actions, not even prosecuted criminally, such as the Texas Gulf Sulphur case,[27] resulted in (at least) hundreds of conferences throughout the United States at which corporate attorneys sought to learn how to advise their clients to avoid violations involving use of insider information for their own profit. Recent prosecutions of partners in some of America's most prominent and prestigious accounting firms led to much re-examination of the firms' responsibility to the public. A study of improved means to weigh the difficulty of specific kinds of cases, and to determine the personnel and other resources needed, could do much to assist investigative and prosecutive agencies to set priorities and make decisions as to where they can best employ such resources. There would be many benefits from longitudinal tracking of investigations and cases, by subject matter, to shed light on the resources such cases consume; on the likelihood that an investigation will result in restitution or provide prosecution or some other remedy; on the likelihood that if a case is prosecuted, a conviction and a particular sentence will result; on the likelihood that court-ordered restitution or fines will in fact be paid, and on the time each step is likely to take.[28] Evaluation researchers, working with policy analysts, may also find ways to better assist policy makers, thereby influencing agency performance. For example, if prosecution of those who have inflicted the greatest harm to victims is allowed to become a

dominant measurement standard, this will certainly not be an incentive for a proactive policy of moving as quickly as possible to protect potential victims.

Among other topics considered but not selected for special attention at the colloquium were the general and specific deterrence of white-collar offenders, public corruption crimes arising out of developing technologies, the relationship between white-collar and other sophisticated crime, and government program fraud. As noted above, many of these subjects were subsumed within the topics selected for special attention.

C. The Colloquium

The greater part of this document consists of the papers prepared for the colloquium which was held in Sterling, Virginia, on August 21-22, 1980. The list of participants at that meeting is included as an appendix to this report.

The overall rationale for the selection of topics was, as noted earlier, that any research agenda must demonstrate the importance of the subject, the role of government in containing white-collar crime research, characteristics of offenders, who can make research contributions, and remedies for behavior which fall under the general rubric of white-collar crime and related abuses. Since the papers speak for themselves and they are also discussed in the summation paper prepared by Gilbert Geis, they will not be reviewed at length in this section. However, they will be briefly considered here in regard to issues dealt within the colloquium.

1. The importance of white-collar crime research. To focus most directly on importance of white-collar crime as a subject for research, Robert F. Meier and James F. Short, Jr., were asked to prepare their paper on The Consequences of White-Collar Crime. They addressed different impacts: financial harm, physical harm, and damage to the moral climate, i.e., loss of trust in our institutions and leadership. They concluded that the indirect consequences of white-collar crime, that is, its impact on the social fabric of the community, are of considerably greater significance than dollar losses, no matter how high these latter may be. Based on this conclusion, Professors Meier and Short saw the need for a research program which:

> . . . studies directly the nature of this impact (on the social fabric), with attention to individual perceptions of the seriousness of white-collar crime and corporate criminality, one's relationship with

> major institutions, and the extent to which these institutions (and subunits within them) are able to generate trust and confidence in their performance.

2. The role of government in containing white-collar crime. There are countlesss government agencies engaged in containing white-collar crime. The term "containment" is used here to denote a mix of deterrence and prevention, investigation, prosecution, related civil litigation and regulatory activity. Containment activities can be considered along lines of function, such as policing, prosecuting, or regulating. It can also be viewed along jurisdictional lines reflecting federal, state, and local efforts. There is much overlap among agencies which seek to deal with white-collar crime along functional lines, and also among federal, state, and local agencies. It would have been impossible to examine the research possibilities of all feasible containment activities. We therefore asked Professor Ezra Stotland to consider The Role of Law Enforcement in the Fight Against White-Collar Crime, and Professor John M. Thomas to consider The Regulatory Role in the Containment of White-Collar Crime.

Professor Stotland chose to address the potential of one form of law enforcement agency, the police, in white-collar crime containment. He noted that police were much neglected and overlooked as a resource in this area, and suggested a number of research thrusts. Professor Stotland first stressed these points among others:

- the police are in the community and have sources of information not available to other agencies.
- police involvement helps to maintain the salience of the criminal remedy for white-collar crime.
- police engagement in white-collar crime enforcement efforts will serve to make credible to the public the seriousness of government enforcement efforts against white-collar crime.

Among other research projects recommended by Professor Stotland were surveys of police to determine the extent to which they are the recipients of information or complaints about white-collar crime, and studies of their motivation to become more active in this field. He also suggests that there is evidence that police often are not aware of the fact that much white-collar crime activity violates criminal laws, and that research testing this hypothesis might lead to a greater police focus on white-collar crime. Most interesting is the possibility he raises that research which could lead to

increased police activity in this area might improve police performance in other, more traditional realms of law enforcement.

Regulatory agencies play a vital role in white-collar containment. By acting as gate-keepers for much business activity, they are in a particularly good position to prevent white-collar abuses, to detect such abuses, and to act on them directly or by referring them to prosecutors for criminal prosecution. They are often in a position to act more quickly and effectively to protect the public than are traditional law enforcement agencies, for example, through injunctive actions and denial of authority to operate in the business area they are regulating. Nevertheless, there may be negative elements in the regulatory role. Professor John M. Thomas addressed these issues in his paper, The Regulatory Role in the Containment of White-Collar Crime. He described regulatory objectives and considered them in relationship to the need to contain white-collar crime. He noted that regulatory objectives focus on achieving compliance rather than punishing violators, and that regulatory agencies are not inclined to seek sanctions where such action is not deemed likely to increase compliance. Thomas further noted that broad agency discretion to fashion remedies for violations and day-to-day working relationships with regulatees could work at cross purposes with criminal enforcement. Prominent among his recommendations for research were studies of how regulatory agencies exercise their very broad discretion to choose between remedies (including referral for criminal prosecution), and of the deterrent effect of cases they do refer for prosecution. Perhaps implicit in these recommendations was the need to develop data which could help regulatory agencies to determine when and how criminal enforcement can contribute to regulatory objectives. Professor Thomas' stress on the need to understand different and often conflicting objectives among agencies operating in the same field came up again later in the colloquium as one of the central issues in Director Stier's paper on New and Potential Remedies for White-Collar Criminal Behavior.

3. Characteristics of offenders. Contemporary concern with white-collar offenders has, as noted above, centered on the crimes of the powerful. Professor M. David Ermann and Richard J. Lundman were therefore asked to consider what it is about large organizations which lead to organizational deviance, or to individual deviance on behalf of organizations by those acting on their behalf. The authors elected to do this by examining corporate violations of the federal Corrupt Practices Act, an Act which bans corporate political contributions. In their paper, Corporate Violations of the Corrupt Practices Act: Description and Analysis, they focus on one major case and conclude that there are identifiable "organizational and environmental pressures which impel individuals in the direction

of corporate crime." They stress the need for research on these organizational forces, which they list as follows:

1. The availability of numerous, essentially accurate rationalizations for criminality.

2. The limited information characteristic of social forces in large organizations.

3. Selection and training of loyal employees.

4. Who can make research contributions? It was noted above that different disciplines have gone their separate ways to examine white-collar crime issues through varying lenses, and with little or no awareness of the others' work. A comprehensive research agenda to deal with any societal problem should consider all possible contributors, whatever their disciplines. Professor Simon Dinitz was therefore asked to consider New Applications of Social Science, Business, and Legal Perspectives to Issues in White-Collar Crime. For his paper, he did a content analysis of four years of articles and editorials in Fortune, Business Week, the Wall Street Journal, and Vital Speeches of the Day. Dinitz discussed white-collar crime issues with a selected group of persons from public administration, accounting, management, law, marketing and related disciplines, engineering and nuclear physics. Next, he considered the insights gained from this content analysis task and from his interviews in the light of criminological perspectives and research. Dinitz concluded that given the complexity of white-collar crime issues which involve many of the most complex questions in our society, a multi-disciplinary approach to research in this field is both necessary and desirable. In the course of this paper, he addressed broader issues concerning white-collar crime research needs and made a number of specific recommendations. These included research on "networking," i.e., the establishment of multi-disciplinary teams to analyze, investigate, and prosecute complex crimes; study of the "whistle blower" and the incentives and disincentives for his or her behavior; and the question whether public attitudes toward white-collar crime determine enforcement action, or whether vigorous enforcement informs and shapes public attitudes on such crime.

5. Remedies for white-collar crimes. Wrongful behavior comprehended by the term "white-collar crime" is subject to response by a multitude of enforcement, regulatory, and administrative agencies, invoking an almost infinite number of statutes and regulations, exercising extensive discretion, and calling for remedies of every imaginable kind. There is, nevertheless, great concern about the adequacy of remedies to achieve containment goals. For example, the question is often

asked whether financial impositions on convicted corporations constitute anything more than a cost of doing business which, even when very high, is really only comparable to one bad business result among many compensating profitable results. Those engaged in combatting white-collar crime, in criminal or regulatory agencies, continually question whether their arsenal of remedies is adequate to punish specific violators or to generally deter others. They are not necessarily concerned with the need to have more severe remedies available, but they desire to have finely graded classes of remedies so that the "punishment can fit the crime." All too often, enforcement personnel are forced to choose between a remedy which is no more than the proverbial slap on the wrist and some draconian and therefore unusable infliction.

Edwin H. Stier is Director of the New Jersey Division of Criminal Justice, an agency which is unusual in that it exercises strong, statewide centralized control over criminal justice enforcement. It has managed a high volume of significant white-collar investigations and prosecutions, and pioneered criminal justice enforcement approaches to new challenges such as environmental issues, e.g., illegal dumping of toxic waste. Mr. Stier's paper, New and Potential Remedies for White-Collar Criminal Behavior, suggests that rather than formulate new remedies, we first must determine why existing remedies are not as effective as they should be. He concludes that the effective marshalling and application of existing remedies are prevented by the differing goals and objectives of agencies with concurrent jurisdiction to deal with the containment of specific white-collar crimes, and that these differing agency objectives present roadblocks to successful investigation and prosecution of offenses. Stier argues for a research program which will provide greater knowledge of the goals and objectives of related agencies and of the relationships among such agencies. To assist in this effort, he suggests a classification scheme for analysis of agency goals and activities as a framework for research.

D. Observations on Colloquium Issues

Following an oral presentation of each paper by the authors, another participant delivered a pre-scheduled response, and the floor was then opened for comments by all of the colloquium participants. This section consists of brief observations on issues raised, under headings which pull together and add to comments made in the course of the sessions.

1. Definitions of white-collar crime. Definitional issues should not be permitted to become roadblocks which prevent initiation of otherwise worthwhile research projects. We cannot wait until everyone agrees on a definition. Nevertheless, the definitional issue is an important one which should be directly

addressed in any plan for research. The term "white-collar crime" may not be too general a description for a colloquium or for a National Institute program, but it is far too general when invoked in a design for specific research. There are greater differences between kinds of white-collar crime, than between many specific white-collar crimes and other illegal acts which clearly would not carry this label. Are we addressing corporate crimes, consumer fraud, or con-games? Those who would be comfortable in applying the label to all of these crimes would still be troubled by the failure to specify which white-collar crime we are talking about.

Another definitional issue which should be clearly addressed is that of how even a specific white-collar crime is to be dealt with as a research question. For example, designs for environmental research should clearly specify the degree to which they will devote attention to criminal or civil aspects of the issues, or to the linkages between them.

By insisting that research designs be most specific in their definitions, much of the vagueness of approach which has characterized work in this field can be avoided.

2. Impact of white-collar crime. The problems of assessing the consequences of white-collar crime have often been discussed. Two points were made in the course of the colloquium which warrant special attention. The first is that the harm we seek to measure should go beyond the financial, physical, and social categories advanced in the Meier-Short paper to consider other containment costs. Among the costs to be measured should be private expenditures for insurance, public and private expenses of pre-audits and post-audits, and systems designed to prevent and deter, to which might be added all those losses from transactions which never are consummated because of fear of white-collar crime and related abuses which are not remediable from the perspective of a prospective victim.

Second, it was observed that the policy usefulness of impact data would be far greater to operating agencies if such data dealt with specific crimes. This kind of information, it was stressed, would be even more valuable for policy usefulness if organized along dimensions of the nature of the perpetrators and the nature of the victims, as well as the nature of the crime. Comparative studies between specific types of white-collar crime, or between groupings which could be shown to share common characteristics or consequences, should also be considered.

3. Interactions between agencies. In one way or another the issue of agency interaction was a major theme in this colloquium. In the Stotland paper, which addressed the police role in white-collar crime enforcement, such relationships were

deemed vital. Police work may often be pointless unless it is appreciated by the prosecutor or another agency which will consummate an investigation with a legal action. Thomas's presentation on the regulatory role and Stier's discussion on remedies focused in large part on the different goals and objectives of agencies which must work together, which have equally legitimate mandates to operate in the same cases, and which therefore strongly influence each other. Professor Dinitz talked of "networking," i.e., operationalizing relationships between agencies whose resources, taken together, can succeed where individual agencies cannot. Stier added an extra dimension here, suggesting that the challenge is not only to achieve agreement among agencies but even more to develop a clear understanding of how the characteristics and missions of agencies determine their real goals. Implicit in Stier's view is the possibility that individual relationships between agency staffs may be important in particular instances, but that better understanding of agency goals and missions and their adjustment and reconciliations may foster structural changes and more permanent improvements.

4. White-collar offenders. There has been much attention given to white-collar offenders indirectly, as in the case of definitional disputations as to what is white-collar crime and more recently in studies of what it is about large organizations which cause them, or their employees, to commit white-collar crimes. Suggestions have been made that researchers should look at organizations which are believed less prone to delinquency, and attempt to determine characteristics which influence organizational behavior. These seem to be highly desirable approaches. In addition, however, we should cut with a finer knife in a number of related areas, asking about the roles and responsibilities of professional and occupational groups to help contain white-collar crime. How do controllers, auditors, and house counsel operate within large business organizations? Do they report to the highest levels of management or do their findings have to go through hierarchical layers? Are outside counsel or auditors truly independent? How would these questions be answered in the case of delinquency-prone organizations as compared to those believed not so prone? Research attention to such questions should be entertained.

5. Awareness of white-collar crime. Current plans for surveying public attitudes and perceptions will undoubtedly involve determination of the public's knowledge of whether particular behavior constitutes white-collar crime or some other abusive behavior which may be remediable by official action. Professor Stotland raised an interesting point in his paper, when he questioned whether police were in a position to properly handle complaints of alleged white-collar criminal abuses in light of some evidence that they themselves knew little about white-collar crime. One should not limit such questions to the

police. Prosecutors have expressed doubts as to whether public officials in local agencies know enough about white-collar crime to recognize the need to make reports of indications of fraud or other suspected violations to them or to the police. A study which could probe the knowledge of agency officials who do not customarily interact with criminal enforcement agencies, to determine whether they would recognize a white-collar crime in their field if they saw one and to learn the standards which they would apply before referring a matter for prosecution, would be of major use to policy makers. It would help with agency interactions, provide a basis for remedial action within agencies which lack sophistication in this field, and add to our awareness of the gaps in our knowledge about the incidence of white-collar crime.

6. Crime-producing environments. Observers of white-collar crime have made frequent note of the fact that since laws often proscribe conduct, they may to that extent create criminal conduct where it did not exist before. One suggested route is decriminalization, or the substitution of stringent regulatory or civil liability alternatives for conduct sought to be curbed. This approach is all well and good when consciously applied to conduct of an equivocal nature, but it cannot be used in all situations where the government, in some sense, produces crime. For example, research consideration should be given to the possibility that compliance violations may be a natural and predictable result of poorly structured government benefit or procurement programs, and that prescribed procedures for competitive bidding on government contracts may make it very difficult to submit a bid without skirting the line at which equivocal language becomes misrepresentation and fraud.

E. Summary

There appear to be three general themes which emerge from preparation for the colloquium, reinforced by the papers which follow and also by the discussions they stimulated. The first is the necessity to distinguish between the different forms of behavior which fall under the rubric of "white-collar crime," since they may vary so widely in terms of motivation, characteristics or modi operandi, victims, impact and amenability to responsive containment operations and legal remedies. The second is the all-too-apparent absence of reliable information about the incidence and impact of white-collar crime and related abuses, overall and by specific categories. Third, and possibly most important to the design of research programs in this field, is the need to recognize, understand, and take into account the relationship among all of the issues discussed above and those directly addressed in the papers which follow.

The importance of this third theme became even more evident during the colloquium. In the discussion of each paper, questions and comments reflected their interrelationships. For example, the implicit definitional decision on the part of many colloquium participants to focus on the behavior of high status offenders could result in rather narrow boundaries for data to be collected on the impact of white-collar crime. Along the same lines, reservations expressed about the role of police in white-collar crime containment clearly reflected doubts that police would be involved in white-collar crime cases which involved such high status offenders. It was also impossible to ignore the close linkage among criminal justice, regulatory, and administrative approaches to the containment of white-collar crime, how each activity influences the other, and the inseparability of data generated by their operations. And finally, it was implicit in the papers that operational "networking" was of crucial importance in this field, compelling the conclusion that white-collar crime research must contribute to greater understanding of the ways in which agencies (public and private) can better work together. The colloquium papers which follow should be read against the backdrop of these common themes.

FOOTNOTES

[1]Edwin H. Sutherland, "White-Collar Criminality," American Sociological Review, 5 (February, 1940), 1-12.

[2]See Gilbert Geis, "On A Research and Action Agenda in Regard to White-Collar Crime" in this report., pp. 196-197

[3]See Robert K. Elliott and John J. Willingham, Management Fraud: Detection and Deterrence (New York: Petrocelli, 1980).

[4]U.S. Attorney General, National Priorities for the Investigation and Prosecution of White Collar Crime: Report of the Attorney General (Washington, D.C.: Government Printing Office, 1980). See also Herbert Edelhertz and Charles Rogovin, eds., A National Strategy for Containing White-Collar Crime (Lexington, Mass.: Lexington Books, 1980); see especially William Morrill, "Developing a Strategy to Contain White-Collar Crime," pp. 85-94; and Frederic A. Morris, "Meeting the Challenge of White-Collar Crime: Evolving a National Strategy," pp. 95-102.

[5]Edwin H. Sutherland, White-Collar Crime (New York: Holt, Rinehart and Winston, Inc., 1949), p. 9; Walter C. Reckless, "Chapter 13: White-Collar Crime," The Crime Problem (5th Edition, New York: Appleton-Century-Crofts, 1973); Herbert Edelhertz, The Nature, Impact and Prosecution of White-Collar Crime (Washington, D.C.: U.S. Government Printing Office, 1970), p. 3; Susan Shapiro, "Thinking About White-Collar Crime: Matters of Conceptualization and Research" (unpublished monograph, Yale University, 1979); Laura Shill Schrager and James F. Short, Jr., "Towards a Sociology of Organizational Crime," Social Problems, 25:407-419, April, 1978; for further reviews of research in the field, see Peter Ostermann et al., White-Collar Crime: A Selected Bibliography (NILECJ, LEAA, U.S. Department of Justice, July, 1977); Herbert Edelhertz et al., "Appendix C, Bibliography of White-Collar Crime Reference Sources," The Investigation of White-Collar Crime: A Manual for Law Enforcement Agencies (Washington, D.C.: U.S. Government Printing Office, 1977), pp. 314-324; "Institute Supports Wide-Ranging Inquiry into White-Collar Crime," LEAA Newsletter, 8:12-14, March, 1979.

[6]Gilbert Geis and Herbert Edelhertz, "Criminal Law and Consumer Fraud: A Sociolegal View," American Criminal Law Review, 11:989-1010, Summer, 1973.

[7]Miriam S. Saxon, White Collar Crime: The Problem and the Federal Response. Report No. 80-84 EPW (Congressional Research Service, Library of Congress, Washington, D.C., April 14, 1980), pp. 1-8; see also Walter C. Reckless, see Note 5 above, and Susan Shapiro, see Note 5 above.

[8]See Saxon, Note 7 above, pp. 8-19.

[9]Joseph R. Gusfield, Symbolic Crusade (Urbana: University of Illinois Press, 1966).

[10]Report on the National District Attorneys Association Economic Crime Project: Fifth Grant Period to the National District Attorneys Association Economic Crime Project by Battelle Human Affairs Reserch Centers, Seattle, WA, August, 1980.

[11]"Study on the Impact and Incidence of White-Collar Crime in American Society." Proposal JYFRP-80-R0031 to U.S. Department of Justice, August 18, 1980.

[12]John Herling, The Great Price Conspiracy: The Study of the Antitrust Violations in the Electrical Industry (Washington, D.C.: Robert B. Luce, 1962).

[13]"Research Agreements Program on White-Collar Crime," Grant No. 78-NI-AX-0017.

[14]Marshall B. Clinard, Illegal Corporate Behavior (Washington, D.C.: Government Printing Office, 1979).

[15]See, for example, the muckraking studies in the Washington Post and in the books by Morton Mintz and Jerry S. Cohen, America, Inc. (New York: Dial Press, 1971), and Jonathan Kwitny, The Fountain Pen Conspiracy (New York: Alfred A. Knopf, 1973).

[16]Edelhertz and Rogovin, A National Strategy for Containing White-Collar Crime, Note 4 above; see also "Report of the National Strategy Conference of the National District Attorneys' Association Economic Crime Project," Bert H. Hoff, rapporteur (Washington, D.C.: July 19, 1979).

[17]See U.S. House of Representatives, Subcommittee on Crime, Committee on the Judiciary (95th Cong., 2d Sess.), White-Collar Crime (Washington, D.C.: Government Printing Office, 1979).

[18]Giuseppe di Gennaro and Eduardo Vetere, "Economic Crime: Problems of Definition and Research Perspectives," First European Symposium of Social Defence on Economic Crime (Rome, Italy: October 28-29, 1977).

[19]Herbert Edelhertz, "Transnational White-Collar Crime: A Developing Challenge and Need for Response," scheduled for publication in Temple Law Quarterly, January, 1981.

[20]See discussion of this issue by Saxon, Note 7 above, pp. 62-63; see also testimony of Donald R. Cressey, Congressional Hearings, Note 17 above, pp. 31-32.

[21]See Edwin Stier, "The Interrelationships Among Remedies for White-Collar Criminal Behavior," in this report.

[22]See Geis and Edelhertz, Note 6 above.

[23]See Geis, this report, p. 199.

[24]See testimony by Donald R. Cressey, Congressional Hearings, Note 17 above, pp. 31-32.

[25]See Geis, this report, p. 196.

[26]Merek E. Lipson, "Compounding Crimes: Time for Enforcement?" Hastings Law Journal 27 (1975): 175-211.

[27]S.E.C. v. Texas Gulf Sulphur, 401 F. 2d 833 (2 Cir. 1968), modified on other grounds 446 F. 2d 1301 (2 Cir. 1971); Cert. den. 404 U.S. 1005 (1971).

[28]An attempt has been made to help answer some of these questions by gathering data from local prosecutors' offices. See Note 10 above.

II. THE CONSEQUENCES OF WHITE-COLLAR CRIME

Robert F. Meier and James F. Short, Jr.
Washington State University

White-collar and corporate criminality are commonly viewed by observers as among the most serious--indeed, the most serious for some--forms of crime (e.g., Ermann and Lundman, 1978; Saxon, 1978; Clinard, 1979). These views appear to be related to the impact of this form of criminality upon society, an impact so substantial that it equals or surpasses that of homicide, robbery, forcible rape, and mass murders. One might be tempted to challenge such opinions as conjectural and the result of personal idiosyncrasies were they not so widely held and so ardently defended among criminologists. How are such judgments made? This is the central question addressed in this paper. In its course, a variety of issues of crime impact and its measurement are discussed. Because so little is known, however, kinds of data and substantive topics that future research concerned with this subject might consider are given special attention.

A. Criteria of Criminal Harm

While we wish to avoid the many conceptual problems associated with the definition of white-collar criminality (Geis and Meier, 1977), it is necessary to provide a preliminary definition of the phenomenon under discussion. We have decided to follow, but not to defend here, the definition of white-collar crime adopted in a recent survey of data sources of white-collar law breaking. Reiss and Biderman (1980: 51-52) define white-collar crime in terms of "1) the violator's use of a significant position of power for 2) illegal gain." These authors continue by noting that:

> The corollary condition that there be damage or harm to victims is an essential condition for all torts as well as crimes. . . . Although calculations of probable harm are implicit in the definition and classification of types of law violation and in the range of possible penalties attached to each violation, in practice the actual harm done to victims is more often than not the principal element in determining the offense alleged and, later, of sanctions.

This makes an evaluation of crime impact all the more important.

Three criteria are most often mentioned in determining the degree of harm from crime: financial loss, physical harm, and damage to the moral climate of the community. This abbreviated list does not exhaust the potential standards by which one can judge an act "socially injurious," but it does seem to capture the dimensions on which observers rate white-collar and corporate criminality as harmful. Unfortunately, different definitions of "white-collar crime" make strict comparisons between white-collar and "ordinary" or conventional crime spurious. Moreover, the nature of these crimes makes complete detection and assessment impossible. This is compounded by the fact that each of the standards of criminal harm is difficult to evaluate unambiguously, making comparative statements between precise levels of harm among different crime categories impossible.

1. Financial harm. Precise financial estimates of the economic impact of white-collar and corporate criminality do not exist; yet, several estimates of such impact have been offered.

In 1974, the U.S. Chamber of Commerce estimated the short-run direct cost of white-collar crime to the U.S. economy at no less than $40 billion annually (Chamber of Commerce, 1974: 5), an estimate that is consistent with that quoted by Congressman John Conyers in hearings before the Subcommittee on Crime of the Committee of the Judiciary in 1978 (Conyers, 1978: 93). In 1976, the Joint Economic Committee of the U.S. Congress put the figure at $44 billion annually. Several observers since that time have pointed out that this estimate is very conservative and excludes a number of offenses (e.g., Sparks, 1978: 112; Rodino, 1978: 146). Senator Philip Hart, as chair of the Judiciary Subcommittee on Antitrust and Monopoly, estimated that antitrust law violations may illegally divert as much as $200 billion annually from the U.S. economy.

Congressman Peter Rodino, in hearings conducted in 1978, informed the Conyers' committee that the Justice Department estimated in 1968 that the estimated loss due to violations of the Sherman Act alone was $35 billion, and a GAO study in 1977 estimated that frauds against government programs in seven federal agencies alone cost the taxpayers roughly $25 billion (Rodino, 1978: 138). Rodino placed the estimated loss from all forms of white-collar criminality as closer to $100 billion annually.

While estimates of total financial loss from white-collar crimes is in the billions of dollars each year, estimates of financial loss from specific white-collar crimes are similarly high. The American Management Association has estimated that the loss due to employee pilferage--arguably a white-collar

crime, but one that is not typically discussed as such--costs the business community $5 billion a year (cited by Clark, 1978: 143).

The difficulty with estimates of specific white-collar crimes parallels that with estimates for white-collar criminality in general: the definition of white-collar crime varies from observer to observer, making such estimates impossible to reconcile. The U.S. Chamber of Commerce estimate, mentioned above, for example, includes the estimated cost of shoplifting, but not price-fixing. That report does not provide a strenuous defense of such an arguable choice of crimes.

Most observers are quick to point out that the estimates they provide are conservative, and that the actual loss is probably far greater. There is agreement, however, that the annual cost from white-collar and corporate crimes is far greater than that from ordinary crime. Measurement of these costs is, as we shall see, extremely complex. Data sources are inconsistent, and plagued by problems of reliability and validity. A beginning has been made (see Reiss and Biderman, 1980), but many problems remain. Statistics on white-collar crime, it seems safe to say, are at a more primitive stage than that which characterized statistics of street crime prior to the initiation of the Uniform Crime Reporting system.

2. Physical harm. While financial estimates, by most standards, are high, they do not include the total losses that accrue from these offenses. For example,

> They do not cover the losses due to sickness and even death that result from the environmental pollution of the air and water, and the sale of unsafe food and drugs, defective autos, tires, and appliances, and of hazardous clothing and other products. They also do not cover the numerous disabilities that result from injuries to plant workers, including contamination by chemicals that could have been used with more adequate safeguards, and the potentially dangerous effects of work-related exposures that might result in malignancies, lung diseases, nutritional problems, and even addiction to legal drugs and alcohol (Clinard, 1979: 16).

Physical harm, like financial losses, can be directed toward at least three different groups: employees of offending firms, consumers, and the community at large (Schrager and Short, 1978). Physical harm to employees includes unsafe and dangerous working conditions, such as those found in many mining operations and in fiberglass plants. The effects of black lung disease and asbestos poisoning are relatively slow to develop, but can result in death.

Harm experienced by consumers includes the sale of unsafe products (e.g., flammable clothing for children) and food and drugs. Perhaps the most dramatic and significant case of consumer harm in recent history arose over the manufacture and sale of an automobile, the Ford Pinto, that had been linked with a number of driver and passenger deaths from an unsafe fuel tank. Although the criminal trial related to this case resulted in acquital of Ford Motor Company, commentators have been quick to point out that the principle of manufacturer criminal liability for their products was more firmly established by the trial. Many other instances of severe physical harm might be cited, although they have not always resulted in criminal prosecution and conviction. For several years, the Beechcraft Company allegedly used a fuel pump with a faulty design that caused a number of deaths of pilots and passengers in the Beechcraft "Bonanza" series of aircraft; the engine would often stop when the plane was placed into a light bank shortly after takeoff, causing a loss of power and control (Geis and Monahan, 1976).

Harm to the community at large can take many forms, such as pollution: air, water, and noise. A recent report estimated that 14,000 citizens in the United States who would have died in 1978 of lung cancer and other diseases related to air pollution were spared because of improvements in air quality since the enactment of the Clean Air Act of 1970 (Lewiston (Idaho) Morning Tribune, April 22, 1980, p. 4A). The estimate was derived from previous studies of the impact of air pollution.

Physical injuries are not readily quantifiable in terms of dollars and cents, and perhaps for this reason, these consequences of white-collar and corporate criminality are viewed as more serious by citizens than are financial or property losses (Schrager and Short, 1980). One difficulty resides in the fact that it is often impossible to demonstrate that actions leading to physical injuries were intentional or were the result of faulty decision-making and other "human-like" qualities. This, evidently, accounted for the recent court decision that found Ford Motor Company not guilty of the deaths of persons resulting from a Pinto fuel tank explosion and fire. The lack of complete documentation concerning corporate liability in such matters does not deny that there are physical injuries; nor does it argue against the notion that the public, regardless of strict legal criteria, may blame corporations and their officers for such acts. Nevertheless, it must be recognized that all of the cautions concerning data sources regarding economic harm apply with even greater force concerning physical harm.

Another difficulty in assessing this consequence is the absence of clear criteria or standards by which physical harm from criminal means can be evaluated. Life itself is physically

risky in many respects; to claim that such risks are due to "criminal" conduct is quite another matter. The best designed aircraft and the most intensively trained pilots still cannot eliminate completely the risk of flying that remains after those precautions. Until the idea of minimum acceptable level of risk is explicated and operationalized, discussions of physical harm from white-collar crimes are likely to be widely speculative. The idea of minimum acceptable levels of risk is not new, having been employed in determining unacceptable health risks for air and water pollution, for example. Airborne particulates, or water contaminates, above specified levels determined medically, are deemed unacceptable. If high levels of particulates or contaminants can be traced to a manufacturing concern, state or federal sanctions can be imposed. As yet, acceptable levels of risk for many types of pollution have not been determined, and they often shift as knowledge is expanded. This further complicates assessments of physical impacts of corporate behavior.

3. Damage to moral climate. While few dispute that the financial loss and physical harm due to white-collar crime are enormous, perhaps the criterion of harm that has been stressed most strongly by sociologists is the set of broader social consequences of crimes committed by persons of high social status. Persons of wealth and high social standing are often held to very high standards of accountability for their conduct. As one observer put it: "It can be argued, convincingly I think, that social power and prestige carry heavier demands for social responsibility, and that the failure of corporation executives to obey the law represents an even more serious problem than equivalent failure by persons less well-situated in the social structure" (Geis, 1972: 380-381).

The notion that prestige carries with it greater responsibility toward the community is objectionable to some on the grounds that it may lead to standards of crime seriousness that depend upon characteristics of persons (e.g., socioeconomic status, race, gender). One of the charges against the traditional criminological focus on ordinary crime is that it does precisely this, since the most serious crimes of this sort are heavily concentrated among lower socioeconomic status segments of the population. Still, it is unmistakable that some crimes are more serious than others, and more serious crimes may indeed be those committed by persons in positions of power and prestige. In fact, one of the characteristics of white-collar crimes--that victimization patterns are spread over many more persons than are most conventional crimes--suggests that crimes by persons in power may have more impact exactly for this reason.

Because of the high social standing of white-collar offenders, some observers have maintained that these violations create cynicism and foster the attitude that "if others are

doing it, I will too" (Saxon, 1980: 12). This interpretation has been given by tax authorities that after exposure of former President Nixon's tax deceits, false reporting of taxes increased substantially (Geis, 1977). More fundamentally, it is held that white-collar crime threatens the trust that is basic to community life, e.g., between citizens and government officials, professionals and their clients, businesses and their customers, employers and employees, and even more broadly, among members and between members and nonmembers of the collectivity. Thus, Cohen (1966: 4-5) argues that "the most destructive impact of deviance on social organization is probably through its impact on trust, or confidence that others will, by and large, play by the rules." Because both the offenders and the offenses are "high placed," this is a particularly bothersome feature of white-collar crime.

The relationship between white-collar crime and prevailing attitudes among the public as to trust has never been explored systematically. Yet, it is precisely public trust--trust in social institutions, groups, and particular persons--that may provide the social glue that is social cohesion in the community. Once that cohesiveness is weakened or broken, the social fabric itself suffers. (We return presently to these considerations, for they deserve more than passing mention.)

These consequences, however, rest to a large extent on some unstated and untested assumptions, namely that (1) high status persons serve as moral role models for the rest of the population who, in turn, pattern their behavior after those they emulate; and (2) that the public generally views such conduct as relatively serious, at least compared to street crime. The former assumption has never been put to empirical test, and one could generate arguments both for and against it. The second assumption has received more empirical attention, both because public perceptions of crime seriousness may be important criteria of harm, and because they may be related to other criteria (mentioned above). None of these studies, however, can be termed "definitive." Paradoxically, the accepted social science view has been that the public does not view white-collar crime as serious, relative to ordinary or street crime. This view may be related to the inconclusiveness of the research; but, if so, it is odd that the second assumption has been implied at all.

B. Public Reactions to White-Collar Crime

The conventional wisdom that members of the public do not view white-collar violations as terribly serious, compared with ordinary crimes, was succinctly summarized by the President's Commission on Law Enforcement and Administration of Justice (1967: 48): "The public tends to be indifferent to business

crime or even to sympathize with the offenders when they have been caught."

This argument dates back at least to Ross (1907: 46) who claimed that:

> . . . the real weakness in the moral positions of Americans is not their attitude toward the plain criminal, but their attitude toward the quasi-criminal. The shocking leniency of the public in judging conspicuous persons who have thriven by antisocial practices is not due, as many imagine, to syncophancy . . . but the fact that the prosperous evildoers that bask undisturbed in popular favor have been careful to shun--or seem to shun--the familiar types of wickedness.

Sutherland maintained this view in his major work on white-collar crime when he claimed that "the public. . .does not think of the businessman as a criminal; the businessman does not fit the stereotype of 'criminal'" (1949: 224). Sutherland, like Ross before him, did not, however, support his claim with reference to data. Work subsequent to Sutherland has perpetuated this view. Clinard (1952: 355) and Aubert (1952) both subscribed to this view, Aubert saying, "The public has customarily a condoning, indifferent or ambivalent attitude," although Aubert does admit that this conclusion is not based on systematic surveys.

Supporters of this conventional wisdom have often attributed this "fact" to the influence of white-collar violators in manipulating stereotypes and images of "the criminal" to exclude themselves. As Sutherland (1945: 270) observed: "Public opinion in regard to picking pockets would not be well organized if most of the information regarding this crime came to the public directly from the pickpockets themselves." Still other writers have quarreled with the reason for public indifference while at the same time maintaining its existence. Kadish (1963) takes as given the public's nonserious perception of white-collar crimes, and uses it to support his argument that white-collar crimes must be processed differently (i.e., administratively, not criminally) for this reason.

1. The evidence. What is the empirical evidence with respect to this conventional wisdom? Actually, there is very little. One small-scale study (one that was conducted as part of a larger survey on a topic quite removed from white-collar crime) is often cited in support of this view. Newman (1953) found that 78 percent of his 178 respondents did not rate violations of pure food and drug laws as comparable in seriousness to street crimes; but, the respondents did favor stiffer penalties than were usually given out for such

violations by the courts. Aside from these findings, most of the research on perceived crime seriousness has suggested a far different conclusion: members of the public do make discriminations among types of white-collar crime (as they do for street crime), rating some as more serious, some as less. And, as a group, white-collar violations are generally ranked as quite serious.

Reed and Reed (1975) found that 305 freshman at a southern university rated a number of white-collar crimes as at least of comparable seriousness as street crimes. Rettig and Passamanick (1959a, b) questioned respondents about the rightness and wrongness of 50 different acts, 5 of which involved business crime. Four of these business crimes were among the 25 eliciting the severest moral condemnation. (A followup showed that most of these white-collar offenses, however, elicited less condemnation with increasing age of the respondents.)

Gibbons (1969) queried 320 San Francisco residents about their preferred punishments for a variety of offenses. Seventy percent of the respondents preferred prison sentences for an antitrust violator, about the same percentage as preferring imprisonment for an auto thief. Forty-three percent of the respondents preferred imprisonment for an advertiser who misrepresents his product, a figure similar to that of the imprisonment of one who assaults another person.

A Harris poll conducted in 1969 concluded that "Analysis of this list of white-collar and street crimes and rankings of seriousness leaves little doubt that immoral acts committed by Establishment figures are viewed as much worse, by and large, than anti-Establishment figures who have caused all the recent flurry of public indignation (Time, June 6, 1969, p. 26).

Clinard (1952: 89-114), in spite of his view that the public does not condemn white-collar crimes to the same extent as street crimes, indicated that polls conducted at the time of his study of OPA violations during World War II found that most persons (between two-thirds and 97 percent, depending on the specific poll of a national sample) favored OPA controls.

Hartung (1953) asked 40 meat company managers and 322 citizens to express their disapproval of 10 different acts (five criminal, five civil and of the white-collar crime variety). Citizens disapproved of the civil acts to the same extent--not more, but certainly not less--as the criminal acts; the meat managers, perhaps expectedly, disapproved more of the criminal acts.

A 1968 survey of U.S. citizen attitudes also found relatively high condemnation for one specific white-collar offender: the embezzler. Samples of 1,000 adults and 200

adolescents rated the embezzler as a less serious criminal than the armed robber, murderer, or narcotics seller to minors, but more serious than the burglar, prostitute, or rioter who engages in looting. There was no difference by sex of respondent in these ratings, but more highly educated and white respondents were more likely to favor lesser penalties (however, even here the degree of condemnation was high). In another part of the survey, respondents were asked how uneasy they would be working with a parolee who had been convicted of a crime. Only the armed robber provoked more anxiety than the embezzler who stole from a charity; much less anxiety was expressed over the prospect of working with a check forger, an auto thief, an income tax defrauder, and a shoplifter. When asked about specific dispositions, 7 percent of the respondents were willing to place the embezzler on probation, but 43 percent favored a short period of confinement, and 42 percent a longer sentence. More lenient handling was favored by the respondents for a 25-year-old burglar, with 20 percent favoring probation, 57 percent a short period of confinement, and 15 percent a longer sentence (Joint Commission on Correctional Manpower and Training, 1968).

More recent surveys show similar results. In a survey of Baltimore residents, Rossi, et al. (1974) found that manufacturing drugs known to be harmful to users and knowingly selling contaminated food which results in a death were rated as more serious than armed robbery, child abuse, selling secret documents to a foreign government, arson, deserting the army in time of war, spying for a foreign government, and child molesting. Of the 140 offenses on Rossi, et al.'s list, 20 could reasonably be considered "white-collar crimes." When considered together, the white-collar offenses as a group were rated as more serious than spouse abuse, burglary of a factory, resisting arrest, bribing a public official, simple assault, and killing a suspected burglar in one's home.

Cullen, Link and Polanzi (1980) replicated Rossi et al.'s rankings in a rural area in Illinois. On the basis of 105 responses, they conclude that citizens do view white-collar criminality as serious (more so, in fact, than did Rossi's respondents), although, as expected, they make distinctions in terms of relative seriousness on the basis of different kinds of white-collar crimes. "Violent" corporate offenses in particular were rated as highly serious. Knowingly selling contaminated food which results in death, for example, was rated as more serious than forcible rape, aggravated assault, and selling secret documents to a foreign government. Causing the death of an employee by neglecting to repair machinery was rated by the Illinois respondents as more serious than child abuse, making sexual advances to small children, and kidnapping for ransom.

Hawkins (1980) surveyed 662 undergraduate university students at the University of North Carolina. Students were asked to rank the seriousness of 25 different acts presented in scenerios altering the nature of the acts and actors. Six of the scenerios depicted white-collar offenses. One such act, a hotel owner who refuses to install a fire alarm and subsequently 100 persons burn, was rated as more serious than a 50-year-old man raping a babysitter, a young man who killed his parents, and a woman who shoots and injures her husband. The other white-collar crimes received differential ratings, although the lowest rated white-collar crime--a man who fails to pay income tax--was rated 16th out of the list of 25.

A preliminary analysis of data collected in a nationwide sample of 60,000 households by Marvin Wolfgang (1980) found that the public does indeed view white-collar crimes as serious. Wolfgang's data show that a legislator taking a bribe of $10,000 was rated as more serious than a burglary of a bank that netted the burglar $100,000. A factory's polluting a city's water supply resulting in only one person's illness was rated as more than twice as serious as the burglary of a private home where the burglar steals $100. Consistently, certain white-collar violations--particularly those that result in injury or death--are rated as very serious, a view that is supported by a reanalysis of Rossi's data by Schrager and Short (1980), who found that white-collar crimes that involve violence are rated as serious as are street crimes of violence, and as more serious than nonviolent crimes of either variety.

2. The confrontation of empirical evidence and conventional wisdom. One must surely wonder on what basis criminologists have maintained the view that the public is indifferent to white-collar crimes. Virtually all the research done to date suggests quite another conclusion: the public does condemn white-collar crimes, many to the same extent or more than forms of ordinary crime. Yet, the conventional wisdom persists: "One must, of course, recognize that the public is far less fearful of dying a slow death as a result of air pollution, or of a disease caused by their occupation, than they fear being robbed or burglarized" (Clinard, 1979: 16).

One could argue, we suppose, that the findings reviewed indicate increased awareness of such crimes on the part of the public, perhaps a shift in public knowledge; that is, the more one knows about these crimes--particularly their harmful consequences--the more one condemns them. The problem with comparing the public with criminologists in this respect is that the latter have done very little research on white-collar crime compared to ordinary crime. At this point, it is doubtful whether criminologists are better armed with scientific knowledge about white-collar crime than the public presently possesses. In this sense, the protestations of criminologists

appear to be a case of "Do as I say, not as I do." Further, one could argue that increased public awareness and knowledge are products of the consumer movement which has taken as its objective precisely this sort of public information dissemination. Yet, even those studies done prior to the current consumer movement suggest that the public has hardly been indifferent to white-collar crimes. In any case, there are other plausible explanations.

a. Heightened social consciousness. There seem to us to be at least three possible explanations for the discrepancy between the empirical evidence and criminologists' interpretation of that evidence. First, the moral condemnation displayed by criminologists is so intense, compared to that of the public, that anything less than total outrage by the public will be interpreted by criminologists as indifference. Such a hypothesis is clearly plausible and, in fact, suggested by the work of many criminologists who have worked on the topic of white-collar crime. Meier and Geis (1979), for example, have recently argued that criminologists have adopted a strict "correctionalist" stance with respect to white-collar crime. The works of Ross, Sutherland, Clinard, and many others seem to have been oriented more toward control and regulation than toward increasing social understanding of this form of criminality, an orientation that is often quite divergent from that which criminologists bring to the study of ordinary crime.

While the ideological position of, say, Sutherland was masked by statements indicating that he viewed his contribution as "reforming criminological theory, and nothing else" (1949: 1), criminologists have recently been less subtle. Donald Cressey, a collaborator with Sutherland and himself a contributor to the literature on white-collar crime, has noted Sutherland's strong reformist inclinations with respect to the conditions he was studying (Cressey, 1976: 214-215). Recently, Cressey himself illustrated this tendency in testimony before the Subcommittee on Crime of the Committee of the Judiciary (Cressey, 1978: 113-114): "I am glad you invited me back because, among other things, my testimony in June didn't show enough indignation. I am quite indignant about white-collar crime, and my prepared statement this time expresses a little of that indignation. I am looking for solutions to our white-collar crime problem that involve something other than mere deterrence and defense."

Such indignation, of course, may simply reflect the greater consciousness among criminologists of the nature and extent of white-collar crime. It is true that many citizens do not realize that they are being victimized by some white-collar crimes (e.g., price-fixing, restraint of trade) and, under those circumstances, the public cannot be expected to react to such behavior. Yet, the evidence reviewed suggests that the public

does react negatively to white-collar offenses in their seriousness ratings (e.g., according to the consequences of the act, and perhaps characteristics of the actor). The public does not lump all white-collar crimes into the same cognitive category, as criminologists often do. There is nothing inherently improper about being indignant about white-collar crime so long as this attitude does not interfere with the scientific task.

b. What people say and what they do. Another possible explanation for the divergence of the empirical literature on public perceptions of seriousness and criminologists' interpretations of that literature is that criminologists are acutely aware that what people say is often different from what they do (Deutscher, 1973). Finding that persons regard some white-collar crimes as serious as some ordinary crimes may tell us nothing, say, of the willingness of those same persons to support legislation dealing more harshly with white-collar criminals, or to convict white-collar crimes from a safe distance, yet accord white-collar criminals differential treatment at the hands of the law (or tolerate such treatment).

One reason for this apparent discrepancy between attitudes and actions may be that the kinds of contingencies that often mitigate criminal penalties are more prevalent among white-collar criminals (e.g., no prior record or no record of violent acts, steady employment, ability to meet other social and financial obligations, few prospects for recidivism, etc.). Moreover, one must consider that most white-collar criminals are not dealt with in front of juries (neither are ordinary criminals, of course), but officials of regulatory agencies; the public seldom has an opportunity to influence directly either the nature of the penalties for these crimes, or the application of those penalties that do exist with respect to specific violations.

Even if citizens were deeply sincere in condemning white-collar crimes, it could be the case that their outrage has no collective expression in the form of citizen groups and lobbyists. However, the tremendous increase in consumer advocacy suggests precisely the opposite conclusion--citizens are not only concerned, but are finding political means to express their opinions (Geis, 1974), even if some recent evidence has indicated that public opinion does not directly affect either the content or the administration of the criminal law (Berk, Brackman and Lesser, 1978).

c. Flaws in the research. A third explanation for criminologists' interpretations of research concerning public reactons to white-collar crimes has to do with various methodological defects of the research, rendering it implausible. One could ask whether respondents were willing to

respond to an investigator's questions about the seriousness of white-collar crimes in a manner that is socially acceptable (at least to the investigator), and still regard white-collar crimes as less serious, on the whole, than ordinary crime. Moreover, it is true that some studies of public perceptions of crime seriousness have used nonrandom samples of citizens (e.g., Newman, 1953; Reed and Reed, 1975; Hawkins, 1980) making generalizations of results questionable.

Rossi et al. (1974) used a representative sample of Baltimore, Maryland respondents (who may be atypical of citizens elsewhere), and other problems limit complete confidence in their findings:

1. The method of rating crime seriousness is that suggested by Wolfgang and Sellin (1964) which presents respondents with a crime description and asks them to rate the crime from "1" to "9" (with "9" being the most serious). This technique has proven troublesome in some respects (e.g., Rose, 1966) and, as a result, investigators have used increasingly a technique, known as magnitude estimation, where an arbitrary value (e.g., 100) is assigned to a criterion crime, and respondents are asked to rate other offenses as more or less serious (by assigning higher or lower values) to the criterion offense (see Erickson and Gibbs, 1979, for a rationale for this procedure and an example of it; also see Wolfgang, 1980). This method greatly increases the potential range of expressed seriousness, thus permitting more variability in seriousness ratings; moreover, one can most easily make comparative judgments about the relative positions of offenses since this technique produces a ratio scale.

2. The number of persons who rated each of Rossi, et al.'s crimes varied from crime to crime (each crime was rated by at least 100 persons). Thus, although the total sample may have been representative of Baltimore citizens, the representativeness of the sample for each crime varied. Rossi and his colleagues do not provide sufficient information about the sample for each crime to satisfy this nagging doubt.

3. Perhaps because of these difficulties, there appears to be a serious problem of response reliability in Rossi's findings. One crime, assault with a gun on a stranger, was inadvertently repeated in the survey. The first time it was asked, this crime was rated as 18th most serious out of the 140 total offenses. The second time it was asked, this crime fell to 24th

position (Rossi, et al., 1974: note, Table 1, p. 229). Moreover, the standard deviation for this offense does not appear greatly larger than those of other offenses in the study, suggesting that reliability may be a problem for other offenses as well. In a subsequent publication, Berk and Rossi (1977: Appendix A) address some of these issues, but do not do so in a completely satisfying manner with respect to these specific issues. Moreover, the subsequent discussion raises yet another question, that of the possibility of low test-retest reliability.

This third problem of Rossi's study was evident in the replication of that study as well. Cullen, Link and Polanzi (1980: 16) indicate that they inadvertently repeated three offenses, and that respondents rated the same crimes differently the second time. Armed robbery of a company payroll dropped from the 29th position to 36th; burglary of a home with stealing of a color television set was ranked both 77th and 82nd; and, assault with a gun on a spouse was ranked 27th and 37th. Such differences in ranks with the same offenses cannot help but raise questions about other crime rankings.

C. Alienation, Social Confidence, and the Moral Climate

If social scientists have misinterpreted (or do not accept) the evidence on perceived seriousness and public concern with white-collar crime, they have left virtually unexamined their own stress on damage to the moral climate and the social fabric. The complexity of these phenomena undoubtedly contributes to the lack of empirical work. Yet, there exist theory and research that are relevant, though the concepts and methods of inquiry of the corpus of this work have not been applied to the study of white-collar crime. In what follows, we discuss two areas of inquiry that seem especially relevant to our concerns, and the implications of these for the study of white-collar crime. Following this, research strategies suggested by these implications, as well as strategies designed to permit greater precision concerning seriousness ratings, are discussed.

1. Alienation. The "alienation syndrome" (Seeman, 1975: 91) is based upon "root ideas concerning personal control and comprehensible social structures." Some of the varieties of alienation that scholars in this tradition delineate relate directly to the lack of trust which is hypothesized to result from white-collar crime. The most obviously relevant variety of alienation in this respect is normlessness, which is prominent in both structural and social psychological theories. Here, the focus is on standards of behavior, not the behavior of individuals. The relationship between the two may be regarded as problematic. Structurally, the concept of normlessness

refers to "the condition in which norms have lost their regulatory powers"; at the individual level, the concept "refers to expectations or commitments concerning the observance of established norms of behavior" (Seeman, 1975: 102). Operationally, attempts to measure normlessness suggest the concept's affinity to trust; for example, in "Dean's (1961) usage (his item: 'Everything is relative and there just aren't any definite rules to live by'), or McClosky and Schaar's (1965) measure of 'anomy' (item: 'People were better off in the old days when everyone knew just how he was expected to act')" (Seeman, 1975: 103). Trust has also been a major focus of recent work on political issues (e.g., Finifter, 1970; Converse, 1972) and on interpersonal trust (Rotter, 1971).

Studies of normlessness suggest, as Seeman (1975: 104) notes, that trust is not a "unitary personality feature, a thread which binds attitudes toward oneself, toward others, and toward the polity into a generally positive (or negative) orientation." A clear implication for study of the impact of white-collar crime is that interpersonal and institutional referrents of trust must be differentiated. Institutions, broadly conceived, have been differentiated in the next body of research to be considered. Before turning to this research, however, mention should be made of other possibly relevant varieties of alienation.

Powerlessness is the dimension of alienation most extensively studied by social scientists. Defined as "a low expectancy that one's own behavior can control the occurrence of personal and social rewards" (Seeman, 1972: 473), powerlessness might be expected to result from white-collar crime to the extent that trust in large corporations, government, or other seemingly responsible organizations is eroded by its occurrence. A less studied dimension, "cultural estrangement" ("the perceived gap between the going values in a society . . . or subunit thereof . . . and the individual's own standards," again following Seeman, 1972: 473), might be expected to rise in response to the crimes of apparently responsible officials in business, government, and other offending institutions.

The other dimensions of alienation delineated by Seeman and others--meaninglessness ("Things have become so complicated in the world today, that I really don't understand just what is going on," an item on Middleton's, 1963, alienation scale), self-estrangement (perhaps the alienation theme with the most venerable history, from Marx to the present), and social isolation (which, in Wilson's, 1968, usage, has a strong trust component, being based on "a desire for the observance of standards of right and seemly conduct," p. 27)--are also important to consider as we study the impact of white-collar crime on moral climate and the social fabric.

While alienation relates in a general way to the moral climate/social fabric impacts of white-collar crime, Seeman's cautions suggest the desirability of differentiating trust and other types of impact into more specific institutional areas than has been customarily done in the alienation literature. Alienation scales have tended to concentrate on interpersonal and political trust, and on disaffection in these areas and in one's work situation (see e.g., Robinson and Shaver, 1973: chapters 4 and 5), areas which may or may not be affected by one's experience with and/or perceptions of white-collar crime. Both general and more specifically directed effects require investigation, as the next body of research to be examined suggests.

2. Confidence in institutions. Since 1972, the General Social Survey (GSS), a project of the National Opinion Research Center (NORC), and the Louis Harris polling organization have been questioning samples of the United States population about their confidence in major institutions. The form of the questions occasionally varies, but the following GSS version is representative and has remained constant throughout the history of GSS (1973-1980):

> I am going to name some institutions in this country. As far as the people running these institutions are concerned, would you say you have a great deal of confidence, only some confidence, or hardly any confidence at all in them?

Similarly, precise descriptors have varied between GSS and Harris, with GSS being more consistent. GSS descriptors, since 1973, were the following: Major companies, Organized religion, Education, Executive branch of the federal government, Organized labor, Press, Medicine, T.V., U.S. Supreme Court, Scientific community, Congress, and the Military. In 1975, Banks and Financial institutions were added. Harris descriptors have been identical in many instances, and very similar in most others. Smith (1979) has examined at length the impact of these and other GSS-Harris differences. His conclusion is that, with proper caution, the confidence items used by GSS and Harris can be used "as measures of the fluctuating state of trust in major institutions" (Smith, 1979: 93). Trust was the single most frequently given definition of confidence by a randomly chosen subsample of the 1978 GSS sample. "In general . . . confidence means to the vast majority of people trusting or having faith in the leadership, while a secondary group emphasizes competence, and a much smaller group stresses the concepts of serving either the common good or personal interests" (Smith, 1979: 76). These differences in definition of confidence were not found to be related to the level of confidence expressed by respondents.

Smith (1979: 87) suggests that a major problem that lends instability to confidence measures relates to the abstract nature of the items. "This can make it harder for items to become crystalized and, as a result, make changes in responses easier and more common." And, again, "Attitudes about confidence are not usually consciously preformulated in a summary and coherent fashion and cannot be simply or automatically plugged into any scale of responses. In essence, the nature of the topic of confidence in institutions probably helps to keep many attitudes uncrystalized and thus makes them more susceptible than average to changes" (Smith, 1979: 88).

It thus appears that confidence is a viable concept, in the sense of being widely and correctly understood, but that the particular institutional items studied are sufficiently ambiguous as to introduce an element of instability. It is possible--and we think probable--that more specific institutional referrents, related to more specific events, might elicit more focused, reliable, and valid responses. Such a strategy would require detailed questioning concerning knowledge, awareness, and concern prior to questioning confidence and the meaning of the concept to respondents. Such a procedure is well worth the effort given the potentially important relation the concept of confidence has with white-collar criminality.

D. The Impact of White-Collar Crime: A Proposal

The impact of white-collar crime may now be restated in terms of the issues discussed above. Impact is of three types: (1) economic harm; (2) physical harm; and (3) damage to the social fabric (including moral climate or climates). The first two of these may be identified with objective--though difficult to measure--criteria such as monetary costs and health hazards associated with white-collar crime. Economic and physical harm are to some extent dependent upon one another, most typically in the form of economic costs associated with physical damage (to health, as a result of disease or injury, and in the extreme case, death). Similarly, damage to moral climate/social fabric is presumably partly a function of perceived and experienced economic and physical harm. By its very nature, however, the social fabric is more than individual experiences or perceptions of harm, or their accumulation. While debate concerning precise meanings is unlikely to be stilled by any definition--nor should it be--based on the "alienation" and "confidence" literature, the notion of trust appears to be crucial.

Trust is an element of both normlessness and social isolation, as these have been measured. Its relationship with other types of alienation, and the relationship of white-collar crime to each type of alienation, are problems worthy of attention. Trust has been defined as a "generalized expectancy

held by another individual that the word, promise, oral or written statement of another individual or group can be relied on" (Rotter, 1980: 1). This suggests an institutional or collective counterpart to interpersonal trust could be defined as the expectancy that institutions can be relied upon to meet the expectations constituents have for them. To the extent that expectations are not met, constituents may become alienated from these institutions, and reduce or eliminate participation in them. Thus, the inability of political institutions to produce effective and meaningful majorities through elective procedures, such that persons can readily identify the most effective means by which they can attempt to satisfy their political self-interest, may reduce the percentage of persons who vote in elections (see also Janowitz, 1978). Similarly, the inability of economic institutions to produce quality goods, at "fair" prices, without resorting to deceptive and illegal means, may lead to economic boycotts, consumer advocacy, and suspiciousness of the business community.

The remainder of this paper examines problems associated with the measurement of each of the types of impact. Since our own research is focused on public assessments of white-collar crime, and on damage to the social fabric, we will concentrate on these areas, while devoting less comment to the assessment of economic and physical harm. We will, however, begin our discussion with the latter.

1. Data sources on white-collar law-breaking. Until recently, there has been no attention given the problem of data sources on white-collar and corporate criminality, aside from the plaintive suggestions of criminologists that current sources are inadequate. Toward that end, Reiss and Biderman (1980), and their associates, have surveyed public and private data sources of white-collar law-breaking. Their "state of the art" survey reveals a multitude of data sources and problems in their interpretation. Their concluding observations, while focused on social indicators and substantive theories of white-collar crime, are no less applicable to the problem of assessing many of the consequences of such crime. They indicate that

> the current state of federal agencies' information systems makes it difficult to develop a system of social indicators on white-collar law-breaking without substantial alteration in their data collection, processing, and reporting subsystems . . . . Quite often the current data cannot provide satisfactory tests of substantive theory, yet they are nonetheless put to it. The result is a body of empirical investigations that are inappropriate and inaccurate tests of theory.

And so it is, also, with respect to assessment of the consequences of white-collar crime. Reliable and valid social indicators of white-collar crime are crucial to any such assessment. Yet, just as the Uniform Crime Reports provide little information as to the consequences of even Class I crimes, social indicators of white-collar crimes are unlikely to provide complete information as to its consequences. Reiss and Biderman (1980: 697) acknowledge that seriousness often enters into measurement considerations in a variety of ways, but conclude that "it seems premature . . . to attempt any classification of illegal gains or harms" and that such problems are "worthy of systematic investigation."

At present, there are substantial problems with virtually any known data source on the consequences of white-collar crimes. Records and statistics maintained by offending organizations, for example, are unlikely to have this sort of information; and, if such information is maintained, it is unlikely to be available to outsiders. Records of enforcement and sanctioning agencies are more likely to have information about the nature of the offense rather than its impact (except perhaps in very general terms). Moreover, those who would attempt victimization surveys that concentrate on white-collar crimes would, somehow, have to compensate for the fact that victims are often unaware of their victimization, a situation that is very different for street crime. Yet, until such work is attempted, discussions of the physical and economic impact of white-collar crime are doomed to be shrouded in controversy and speculation.

2. Public assessment. Public assessment of the impact of crime has most often been studied by means of seriousness ratings. Contingencies of perceived seriousness have seldom been studied directly. Rather they have been inferred from variations in ratings of crimes associated with, e.g., age, sex, and other characteristics of the victim and the offender, and the relationship between the victim and the offender. We propose to study these relationships directly by inquiring as to the influence on perceived seriousness of dimensions of harm, such as those suggested by Reiss and Biderman (1980). We propose, further, to study the effect on perceived seriousness of the degree of harm associated with crimes, i.e., economic, physical, and "community" (social fabric/moral climate) criterion, as noted earlier.

Earlier research suggests strongly that physical harm is perceived as more serious than is economic harm, for both white-collar and ordinary crime. However, the range of such variation, and the influence of victim-offender relationships, has hardly been studied at all. This is particularly true with respect to white-collar crime in which such relationships may be critical, as between employers and employees, producers of

products and consumers of those products, or between the general public or segments thereof, and those who offend against them, e.g., polluters of the environment or corrupters of common trust (see, e.g., Shrager and Short, 1978 and 1980).

Little systematic research of this sort has been undertaken--none, to the best of our knowledge, concerning white-collar crime. Sykes and West (1978) report exploratory research concerning "how people perceive various crimes and how the elements composing these images influence their evaluations" (p. 3). Fifty respondents from randomly selected households in Charlottesville, Virginia, were interviewed concerning their images of ten crimes (none, regrettably, white-collar crimes) selected from the Rossi, et al. (1974) study. Asked "what factors would, in their judgment, make each crime more or less serious," respondents volunteered "at least eight major factors at work":

> First, as might be expected, the degree of bodily hurt and the degree of economic damage or loss a crime caused were both cited. In addition, however, many respondents also pointed to the degree of psychological or emotional damage caused by a crime; the degree to which a crime posed a threat to persons other than the victim or its potential for harm; the presence or absence of intent--that is, the extent to which the crime was "voluntary"; what the offender expected to achieve by the crime, which can be called purpose; why the offender had that purpose, which can be called motive; and finally the presence or absence of something that can be called fair play. Judgments concerning the seriousness of crimes are apparently based not simply on some concept of financial or physical injury, but represent instead a complex set of evaluations in which the character or nature of the criminal is no less important than the consequences for the victim. (Emphasis in original.)

These findings are suggestive, but hardly (as Sykes and West readily acknowledge) definitive, again particularly with respect to white-collar crimes in which both perpetrators and victims often are organizational, or at least far more numerous than is the case for the common crimes studied. Such findings, in any case, call even more strongly for the inclusion of possibly relevant contingencies in determining public perceptions of white-collar crimes.

3. Measuring social impact: seriousness and harm. No social impact of white-collar crime involves all the complexities of the phenomena so labeled, as these are understood and reacted to by citizens, individually and in a variety of collectivities. Economic and physical harm,

experienced and perceived, however measured, are related to social impact, but in largely unknown ways. Studies of perceived seriousness, as we have seen, yield impressive empirical regularities concerning the relative seriousness of particular crimes and combinations of victim and offender characteristics. Yet, little is known of the precise bases for perceived seriousness, i.e., the characteristics of crimes that are associated with assigned seriousness ratings. We know that, in general, crimes resulting in physical harm are rated as more serious than are crimes resulting in economic harm, and that the degree of each type of harm is associated with perceived seriousness. Yet, that knowledge is quite limiting, and is unlikely to generate any new insights concerning public perceptions of crime seriousness or, more grandly, public perceptions of trust and confidence in social institutions.

This insight, however, does not take us very far unless other sources of complexity are taken into account. Two such factors that are worthy of attention include personal experience with crime, and the relation of white-collar crime to values. Instances of white-collar crimes may result in trivial individual harm (e.g., persons being victimized by a price-fixing conspiracy may be charged only one penny more for a product as a result of that crime); yet, those small individual harms can be aggregated into losses that are substantial indeed (Reiss and Biderman, 1980). Given the literature reviewed earlier, individual perceptions of crime seriousness may rely less upon personal experience with crime--such as being victimized directly and substantially--than upon other bases. Moreover, values such as those placed on private ownership of property and enterprise (and its uses), as well as other fundamental values (Rokeach, 1979), seem likely to be related in more complex ways to white-collar than ordinary crime.

A second aspect of measuring social impact concerns various dimensions of trust, drawing upon the literature of alienation and on confidence in major social institutions. Here, the focus is on the social fabric. The rich literature on alienation and institutional confidence unfortunately has little reference to white-collar crime. Substantive findings in both literature and in research on political efficacy are of considerable interest and relevance, however. It is known, for example, that better educated and high socioeconomic status persons generally have lower scores on powerlessness and normlessness scales, and higher scores on political efficacy. These same persons seem more likely to be aware of and knowledgeable about white-collar crime in general, and with respect to particular instances which have achieved notoriety, e.g., the Thalidomide and Love Canal disasters, and price-fixing by major electrical companies. Nisbet (1979), among others, has pointed to the great difference in public understanding and reaction to widely publicized events such as the accident at Three Mile Island, and less publicized

but equally or even more serious conditions, such as contamination of water ways by chemical dumps. It will be important, therefore, to study carefully a variety of segments of the population, and general perceptions of economic and physical harm caused by white-collar violations, as well as knowledge of and reactions to particular events.

Powerlessness and normlessness generally are positively related to one another, and both are negatively related to political efficacy. But, how these are related to the phenomena of white-collar crime is not known. The politically and economically powerful are less likely to suffer serious (to them personally) consequences of white-collar crime--and, by definition, more likely to be engaged in it than are the less powerful. Awareness of the seriousness of violations that threaten the environment--air, water, and esthetic quality for example--may make them more concerned than others who are less aware and less knowledgeable. Beliefs in political efficacy--confidence in their ability to control events--may lead them to be less alienated from the system, however. Because white-collar violations so often involve corporate enterprise and its relationship with government, political philosophies become involved in attitudes related to the phenomena. This is evident in lobbying efforts related to legislation concerning corporate behavior as well as enforcement. A prime example is Occupational Safety and Health legislation (OSHA) concerning which labor and business groups are strongly opposed. At issue are activities to be defined in violation of law, as well as policies and practices of law enforcement and how these are to be reported--and therefore understood by interested groups.

Political and economic issues involved in the assessment of the impact of white-collar crime are illustrated by recent polls concerning confidence in business and government regulation. Defenders of private enterprise have been quick to point out that declining confidence in corporate business has not been paralleled by beliefs that government regulation of business should be increased. In fact, quite the opposite has occurred, if the polls are to be believed. Majorities of those questioned express the opinion that government regulation of business should be decreased. It is also the case, however, that confidence in government has eroded in recent years, according to the polls. Lack of support for government regulation may, therefore, reflect a lack of trust in government rather than a lack of faith in the efficacy of government regulation or in the system in general, as some have suggested.

These interpretations are clouded, also, by findings that confidence in business varies a good deal by broad product categories. Confidence in the drug industry, for example, has been found to be relatively low compared to most other

industries (Lipset and Schneider, 1979: 8). While it is possible that the drug industry is tainted by association among some with illegal drugs, such as heroin, it is also the case that the industry has been involved in some of the more notorious cases of widespread physical harm, i.e., Thalidomide and DES, for which large court penalties have been assessed. Clearly, there is need for careful assessment of public knowledge and opinions concerning the behavior of specific industries, and perhaps of specific companies.

In addition to targeting specific categories of white-collar offenders, it is necessary to target segments of the population according to their status--or potential status--as victims. This can be done both by identifying "known groups" of victims and by specification of groups with differing victimization probabilities in the general population. In each case, there is reason to believe that classes of victims should be distinguished. It has been suggested that individuals may be victimized by virtue of their status as employees, consumers, or members of the general public; that is, white-collar violators may victimize persons in the work place, or as consumers of products, or members of the general public by virtue of common dependence upon air, water, or soil. To this list, can be added victimization as co-owners, as in the case of stockholders of companies who are defrauded or victims of embezzlement.

In spite of all this, however, the precise relation of victimization to perceptions of crime seriousness and/or trust and confidence in institutions is troublesome. Thus, while personal experience may be less important than previously thought, one's relation to a class of potential or real victims may be very important in determining such attitudes.

These considerations all point to a research design that is sensitive to different populations, a design that employs multiple indicators of concepts such as social trust, perceived seriousness of different crimes, and value positions, and a design that attempts to examine the consequences of white-collar and corporate criminality within the larger context of "community." Sociologists for some time have maintained that the most devastating impact of white-collar crime resides in the nature of social relationships that may be altered as a result of declining trust and confidence in institutions (which provide the setting for most interaction). To date, there has been little empirical work to generate a more refined statement of this impact. This is precisely what we call for here. At this point, there is ample reason to believe that white-collar and corporate criminality may have consequences that are far more serious to the nature of communities than ordinary crime. As such, the sociological agenda seems unmistakable.

E. Summary and Conclusions

The impact of white-collar crime in economic and physical terms has occupied most of the attention of criminologists, although the estimates of such harms are imprecise. Increased precision might be achieved with more attention to the notion of "minimally acceptable level of risk," devising standards of such risks, and applying these standards across a broad number of behavioral areas. It seems likely that until such criteria can be developed, estimates of the extent to which white-collar crime constitutes socially injurious conduct will continue to be speculative.

The impact of white-collar crime on the social fabric of the community is perhaps the most serious harm discussed by sociologists; but, no one has yet devised a method by which such an impact can be determined empirically beyond very general statements of "social harm." We propose that (1) the impact of white-collar crime on the social fabric is perhaps the most important, long-term harm of such offenses; (2) that sociologists need to devote a good deal more conceptual and theoretical attention to the nature of the social fabric, as well as beginning to explore such concepts empirically; and (3) that a reasonable starting point for such work would lie in the notions of alienation, confidence in major institutions, and collective trust. The research that has been devoted to these areas thus far has not recognized their possible relation with white-collar crime, although the implications of these relationships pose intriguing and seemingly fruitful areas of inquiry.

The research program envisaged here is one that studies directly the nature of this impact, with attention to individual perceptions of the seriousness of white-collar and corporate criminality, one's relationship with major institutions, and the extent to which those institutions (and subunits within them) are able to generate trust and confidence in their performance. Until such questions are posed directly, discussions of the consequences of white-collar crime will suffer from the narrow focus that presently characterizes them.

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III. CORPORATE VIOLATION OF THE CORRUPT PRACTICES ACT: DESCRIPTION AND ANALYSIS

M. David Ermann, University of Delaware
Richard J. Lundman, The Ohio State University

A. Introduction

Discussion of whether corporations have responsibilities to the general public would have seemed peculiar to Americans of a few centuries ago. They assumed that public service was the major goal of every bank or manufacturer seeking to be incorporated. Their assumption also was law.[1] Historically, an American organization could be created only if its incorporators showed British monarchs and later state legislators that issuance of a charter to incorporate would enhance the public good. The issue was not just whether the new corporation would be law-abiding and inoffensive. Corporations had a positive responsibility for public service.[2] In order to insure that a new corporation would serve the public good, state legislatures reviewed requests for incorporation one at a time and required that potential incorporators demonstrate how issuance of a charter to incorporate would serve the interests of the public-at-large.

However, states soon realized that they could attract business and thus increase tax revenues and employment opportunities by relaxing incorporation standards and procedures. New York became the first state to undertake such relaxation in 1827,[3] and other states quickly followed in an effort to compete. In the decades which followed, positive public service as a condition for incorporation faded rapidly. What is now required to incorporate is the will to do so, ability to pay a relatively modest fee, and enough creativity to discover an original name for the corporation.[4] Currently corporations have no positive obligation to serve the public-at-large.

Corporations instead are held to minimum standards of not violating the law. Corporations have many of the same legal obligations as individuals. Laws prohibiting false advertising, for instance, are essentially similar to laws prohibiting fraudulent acts by individuals.[5] Corporations also confront special laws intended to protect the public-at-large from certain corporate actions. The Corrupt Practices Act is one such law. In the early part of this century, Congress added Section 610 to Title 18 of the United States Code.[6] This Act made it illegal for business corporations to make direct or indirect financial contributions to candidates for federal

office. Many states quickly passed similar laws making it illegal for corporations to make financial contributions to candidates for state office.

1. Purpose of the paper. The purpose of this paper is to describe and analyze corporate violations of Section 610 of Title 18 of the United States Code, The Corrupt Practices Act. It begins by sketching the origins of this Act, and its enforcement immediately following the Watergate break-in. Then, descriptive and analytical attention is directed at one corporation violator, the Gulf Oil Corporation.

In describing and analyzing corporate violations of the Corrupt Practices Act, we will suggest some of the elements of a research agenda on white-collar crime by addressing three issues. First, we believe it necessary to begin to examine the processes surrounding the criminal labeling of corporate actions. We therefore will illustrate the nature of this analysis by briefly sketching the origins of The Corrupt Practices Act.

Third, we believe it is crucial to begin to probe the origins of corporate criminality. In undertaking such analysis, we seek discovery of the ways in which organizational forces, not just individual proclivities, relate to corporate criminality. We therefore will provide an organizationally sensitive analysis of some of the forces which helped propel Gulf Oil employees in the direction of corporate violation of The Corrupt Practices Act.

B. The Corrupt Practices Act[7]

Prior to 1907, corporate campaign contributions were both legal and frequent. The privately owned United States Bank, for instance, spent $80,000 just for pamphleteering in the 1832 presidential campaign. Sugar refiners spent large sums in an effort to dictate sugar tariffs in 1892. And, the Standard Oil Company, one of the first truly national corporations, spent $500,000 in the 1896 and 1900 elections.

Corporations making campaign contributions generally were those most directly dependent on government regulations and decisions. For instance: between 1888 and 1900, politicians were attempting to decide where to locate a canal linking the Atlantic and Pacific Oceans. Corporations interested in building the canal variously lobbied that it be located through Nicaragua or across the Isthmus of Panama. Here is part of what happened:

> The elder Senator La Follette tells us that preceding the presidential election of 1888, Republican leaders urged him to support the Nicaraguan Canal Bill

> because parties interested in its passage had offered to contribute $100,000 to the Republican campaign fund if the bill was acted upon favorably. A similar amount had been offered to the Democrats.[8]

Corporate campaign contributions started to become a public issue in the United States in the late 1800s, in part because of a British law forbidding corporate contributions in 1883 and because "some . . . deplored the part which banks and other corporations played in financing the Republican campaign of 1896."[9] But it only reached the public's general attention in the 1904 presidential election. In the final weeks of that election, the Democratic candidate for President, Judge Alton B. Parker charged that his Republican opponent, Teddy Roosevelt, had accepted large contributions from corporate interests wanting governmental favors.

Judge Parker and other Democratic campaigners refused to take any contributions from corporations, although they were legal at the time. They also tried to link Republican support for high tariffs to corporate contributions, feeling this was an issue with which many voters would sympathize. On October 24, 1904, for instance, Judge Parker asked:

> Shall the creations of government, many of which pursue illegal methods, control our elections, control them by moneys belonging to their stockholders, moneys not given in the open and charged upon the books as moneys paid for political purposes, but hidden by false bookkeeping?[10]

Republicans did not directly address Judge Parker's charges, the issue having been raised very late in the campaign. Instead, they noted that both parties had been in the habit of receiving corporate contributions, denied that they had made any promises in return for contributions, and claimed that Democrats also were receiving corporate money.

In the words of one observer at the time, public opinion "had not been sufficiently aroused to declare itself . . ."[11] in the election. More concern existed for the amounts of these funds than the fact that they existed. However, the issue was strong enough to outlive the election and help foster subsequent changes in the sources and public disclosure of political contributions.

In his message to Congress in December of 1905, President Roosevelt recommended a law abolishing corporate political contributions. And, in January of 1907, Congress passed such a bill. In some quarters, there was a clear understanding of the need for this kind of protection for the public-at-large, as the

court showed in one decision upholding the law's constitutionality in 1916:

> Its purpose is to guard elections from corruption, and the electorate from corrupting influences in arriving at their choice.[12]

Similar laws were passed at the state level. By 1905, five states already had statutes prohibiting corporate political contributions. Sixteen more states added the laws by 1910, and fourteen more between 1911 and 1920.[13] These laws, along with their federal counterpart, came to be called "corrupt practices acts" and dealt with many aspects of electoral money. They reflected a public concern with the general problem of political corruption with corporate contributions, only one aspect of the overall problem. As a result, many people were ambivalent about these recently criminalized corporate actions.

Ambivalence about corporate contributions is well illustrated in a 1929 case involving a local utility company in Iowa. The company violated state law by spending two to three thousand dollars to defeat a mayoral candidate who had attacked company rates and promised to try to establish a municipal electric plant. The judge, probably sharing some of the mixed feelings of his fellow citizens, saw no distinction between political expenditures by citizens versus those by corporations. He said in his decision:

> I infer that the power company was attacked, and it is asking too much of human nature to expect the corporation not to defend itself. On the other hand, if the corporation set out to corrupt the electorate, it must certainly be punished. . . .[14]

Although ambivalent, the judge ultimately ruled that the company had made an illegal campaign contribution.

Federal and state bans on corporate political contributions have remained in effect since 1907, and only the manners in which they are enforced and the specification of how they are to be interpreted have changed. Their impact, however, is not clear. It probably is safe to agree with some earlier observers that prohibitive legislation did not dry up corporate political contributions, but did reduce them from what they had been or would have been. And it also seems probable that there was clear but not fervent public support for banning corporate cash contributions.

Perhaps because of a general lack of public concern, enforcement of the Corrupt Practices Act has been essentially nonexistent. Illegal corporate contributions have been described as a "part of life,"[15] but contributors and

recipients of these illegal funds have not been quick to reveal their illegal transactions. Additionally, enforcement officials have not devoted resources to the discovery and prosecution of corporate offenders. As a consequence, these laws rarely had been enforced. Watergate changed that.

1. Enforcement following the watergate break-in. On June 17, 1972, a private security guard encountered evidence of a break-in at the Watergate complex in Washington, D.C. Police were called, and five men were arrested inside the Democratic National Committee Headquarters.[16]

By June 19, 1972, links had been established between the Watergate break-in, the Committee to Re-Elect the President (CREEP), and the White House.[17] Linking of the break-in with CREEP occurred when it was learned that one of the burglars, James J. McCord, Jr., was security coordinator for CREEP. Linking of the break-in with the White House occurred when it was learned that two of the burglars carried address books with the name of Howard Hunt and the notation "W. House." Calls to the White House revealed Howard Hunt's employment as an aide to Charles Colson, Special Counsel to President Nixon.

Parts of the ensuing investigation focused on identifying the sources of funding for the Watergate break-in and related actions. In July of 1973, Watergate Special Prosecutor Archibald Cox announced his office had evidence American Airlines had made an illegal $55,000 corporate contribution to CREEP.[18] Mr. Cox requested that other corporations voluntarily disclose their illegal contributions to CREEP.

Also during the summer of 1973, Common Cause brought suit against CREEP, asking that all corporate contributions be revealed.[19] Common Cause won its suit, and that action, coupled with Mr. Cox's request for voluntary disclosures, was the first step in a process which culminated in the conviction of 18 corporations for violations of the Corrupt Practices Act. The corporations, most of which pleaded guilty, were American Airlines, American Shipbuilding, Ashland Oil, Associated Milk Producers, Braniff Airways, Carnation Company, Diamond International, Goodyear Tire, HMS Electric, Gulf Oil, LBC & W, Incorporated, Lehigh Valley Co-op, Minnesota Mining, National By-Products, Northrup Aviation, Phillips Petroleum, Time Oil, and Ratrie, Robbins, and Schweitzer.[20] Fines were levied in amounts ranging from $1,000 (National By-Products, Inc.) to $25,000 (Ashland Oil).[21] Gulf received the modal fine of $5,000. The aftermath of Watergate saw the first federal prosecutions of corporations for violation of the Corrupt Practices Act.

C. The Gulf Oil Corporation

Among the reasons for focusing on Gulf's actions, two are of prime importance. First, Gulf's criminal actions were investigated extensively by government agencies and Congressional committees,[22] thus permitting detailed description and analysis. Second, Gulf's actions are representative of a frequent type of corporate criminality. In addition to the 18 corporations actually convicted of violating the Corrupt Practices Act, another 300 also were reported to have made illegal contributions.[23]

Analysis of Gulf's actions should help illuminate this frequent type of corporate crime. For these important reasons, the Gulf Oil Corporation is the focus of our descriptive and analytical attention.

1. Description of Gulf's actions.[24] Gulf's violations of The Corrupt Practices Act began over twenty years ago. In about 1959, four of Gulf's top executives--William K. Whiteford, Gulf's Chairman of the Board and Chief Executive Officer; Joseph Bounds, Executive Vice President; Archie Gray, General Counsel; and William T. Grummer, Comptroller--became alarmed over what they perceived as "creeping encroachment"[25] by government toward the oil industry. They complained publicly about arbitrary oil import quotas, attacks against depletion allowances, the unwillingness of government agencies to grant Gulf a fair hearing, and conflicting government regulations. In a pamphlet sent to stockholders and employees, it was argued:

> We have seen the development of a situation in which Gulf--and the industry--had been subjected to increasing attacks while in the political climate of our times, it has increasingly been denied a fair hearing.[26]

The pamphlet also called upon employees and stockholders to "get involved"[27] in politics and announced the opening of a Government Relations Office in Washington, D.C.

The immediate problem confronting the Gulf executives committed to a more active political involvement was gathering the money needed for such an undertaking. Apparently aware of The Corrupt Practices Act, they initially attempted to gather voluntary contributions from Gulf executives. This "flower fund" scheme failed, and those involved in the origins of Gulf's illegal actions were faced with what was presumably a difficult decision: whether corporate funds would be diverted to permit contributions to candidates for public office.

For reasons we later will make clear, Gulf's top executives decided to violate The Corrupt Practices Act by giving "laundered" corporate funds to candidates for public office.

a. Laundering: the Bahamas Connection. For laundering chains originating in the United States, the initial step occurs when money is secured from a source which does not want to be identified.[28] The money then is sent to another location, usually a person and bank in a foreign country. There the original money is exchanged for foreign currency and that currency is used to buy back U.S. dollars. "Clean" dollars then are returned to the United States for distribution. Laundering is a chain of cash transactions intended to make identification of the original source difficult.

Bahamas Explorations was a nearly inactive Gulf subsidiary located in Nassau. Each year it applied for and received a small number of exploration licenses, and it occasionally undertook exploratory surveys. Prior to 1959, Bahamas Exploration appears to have been a holding operation, reserving Gulf a place should significant deposits of petroleum or natural gas be found in the Bahamas.

Bahamas Exploration was Gulf's money-laundering center. At Gulf's home office in Pittsburgh, money was listed as fraudulent deferred charges to be paid suppliers by Bahamas Exploration. A deferred charge is a future debt with money reserved for payment. If a deferred charge is fraudulent, then no voucher for its payment is ever received, and money is freed for use. Money, therefore, was sent from Pittsburgh to Bahamas Exploration in Nassau to pay fraudulent deferred charges.

William C. Viglia was an Assistant Comptroller for Gulf stationed in Nassau and was responsible for accounting at several Bahamian subsidiaries, including Bahamas Exploration. In 1961, he was called to Gulf's corporate headquarters in Pittsburgh by Executive Vice-President Joseph Bounds. Mr. Bounds told him that "there would be certain funds, monies, coming down to the Bahamas, that he was to deliver this money to . . . [the head of Gulf's Government Relations Office in Washington, D.C.] and to Bounds, and that's it." Mr. Viglia did as he was told, returned to Nassau, and established the first of several bank accounts.

Mr. Viglia then awaited instruction regarding return of the clean money. The money moved as follows:

> After receipt from Viglia of an envelope containing cash, Bounds locked it in the safe which [Chairman of the Board and Chief Executive Officer William] Whiteford had asked him to maintain in his office in the 31st floor of the Gulf Building. After a

> delivery, Bounds informed Whiteford . . . [who] . . . thereafter entered Bound's office during the latter's absence, opened the safe, removed the envelope, and left the safe open. The safe remained open and empty until another Viglia delivery, when the same procedures were followed.[30]

In a three-year period starting in about 1961, $669,000 was returned to the United States in this way. Mr. Bounds retired in 1965, and the more than $5 million earmarked for politicians was delivered to another Gulf employee, Claude Wild.

In 1959, Claude Wild was a legislative analyst for the Mid-Continent Oil and Gas Association. He was known to have extensive contacts with members of Congress and their aides when Gulf officials hired him to head their newly created Government Relations Office in Washington, D.C. The executives who hired Mr. Wild told him that Gulf had been "kicked around, knocked around by government,"[31] and that Gulf intended to change that. They also told him that illegal corporate campaign contributions were "a part of life,"[32] that Gulf would join other corporations in making such contributions, and that he would get a minimum of $200,000 per year to distribute to candidates.

Until at least 1962, Mr. Wild's funds came via the route just described. After 1965, all deliveries were made directly to Mr. Wild by Mr. Viglia. Both men took special precautions to shield their actions from outsiders:

> Viglia . . . never . . . [came] . . . to Wild's offices . . . no records were maintained. . . . [W]hen Wild needed funds he telephoned Viglia and Viglia delivered the cash. . . . Wild and Viglia met at various points throughout the United States, but never in a Gulf office.[33]

b. Distributing: the Washington Connection. Claude Wild was responsible for distributing the laundered funds. However, $5 million is an enormous amount of money for one person to distribute, especially in small amounts as was Gulf's custom. According to Mr. Wild, it was "physically impossible for one man to handle that kind of money."[34] Consequently, he used three people in his own office, seven of his office's regional vice-presidents, and seven others, including Gulf employees and personal friends to help distribute the money.

In distributing these funds, Mr. Wild indicated that the sole criterion was that "the money be spent in the general interest of Gulf and the oil industry."[35] Following this general guideline, he handled nearly all of the payments to

candidates for national office, while his assistants generally handled the payments to candidates for state and local offices.

Of the $5 million given to candidates for public office, it is possible to identify the recipients of only $870,000. On advice of counsel, Mr. Wild declined to identify recipients. He also declined on grounds that he could not ever recall informing anyone that they were receiving laundered corporate funds.

Despite Mr. Wild's concern with maintaining the image of the public officials who accepted laundered Gulf funds, it is possible to construct a partial listing of recipients. The single largest known contribution was to CREEP. The amount was $100,000, and a member of the Senate Watergate Committee described how it was solicited:

> Mr. Lee Nunn . . . came to Wild's office and told him that the Committee to Re-Elect the President would handle the 1972 Nixon campaign outside the normal Republican channels . . . . Nunn suggested that if Wild wanted verification of Nunn's role in the effort, he should get in touch with Attorney General John Mitchell. Wild met with Mitchell in his office at the Department of Justice and Mitchell indicated that . . . (CREEP) . . . was a legitimate operation and that Mitchell had full confidence in Nunn.[36]

Mr. Wild called Mr. Viglia, obtained $50,000 in cash, and delivered it to Mr. Nunn. Some time later, Secretary of Commerce Maurice Stans called Mr. Wild and told him that a "kind of quota for large corporations of $100,000"[37] had been established. Mr. Wild again called Mr. Viglia and then delivered the additional money to Mr. Stans, thus meeting CREEP's quota.

However, Gulf contributions were not limited to candidates for the Presidency. Gulf funds also were distributed to Congressional campaign committees, candidates for the U.S. Senate and House, their aides and friends, and candidates for state and local offices.[38] Apparently Gulf felt that not only had it been "kicked around, knocked around" by federal government but by state and local governments as well.

c. Disclosure: the Watergate Break-In. Gulf's illicit activities were a well-kept secret despite involvement of numerous Gulf employees and hundreds of recipients. Members of the general public did not know that Gulf was subverting the electoral system. Were it not for the Watergate break-in, there is little reason to believe the actions of Gulf and hundreds of other corporations would have been disclosed.

2. Analysis of Gulf's actions. In the remainder of the paper we probe for some of the origins of corporate violations of The Corrupt Practices Act. In pursuing this analysis, we assume that organizational forces rather than individual pathologies best explain corporate criminality. We thus agree with Laura Shill Schrager and James F. Short, Jr.'s recent observation:

> While organizations cannot act independently of the people that constitute them, it does not follow that determination of the culpability of individuals should be the primary focus. . . . Preoccupation with individuals can lead us to underestimate the pressures within society and organizational structures which impel those individuals to commit illegal acts. . . . Recognizing that structural forces influence commission of these offenses . . . serves to emphasize organizational as opposed to individual etiological factors, and calls for a macrosociological rather than individual level of explanation.[39]

Given our shared animating assumption, we now seek preliminary answers to the following question: what is it about life in and around large organizations that impels individuals to commit illegal acts?

a. Rationalizing criminality. Rationalizations[40] are explanations for actions taken or planned. People use rationalizations to explain past actions to themselves and if there are questions, to others. People also use rationalizations in advance of certain actions, literally permitting their release. These pre-behavior rationalizations are especially important in permitting release of actions known to be improper or illegal. They are the reasons a person provides in advance in criminality, explanations as to why it is necessary and acceptable to engage in actions that otherwise would make one uncomfortable.

Corporate structures and environment provide top-level executives with large numbers of essentially accurate rationalizations for criminality. In the case of Gulf, available rationalizations were so numerous and accurate that most individuals finding themselves in the same positions as Gulf's executives also would have decided to violate The Corrupt Practices Act.

Gulf's elites could tell themselves that other corporations were doing what they were considering. Illegal contributions were believed to be a routine part of corporate and political life, with Gulf at a disadvantage as compared to less inhibited corporations. Additionally, The Corrupt Practices Act had been

in existence for over half a century. Despite the Act's long existence, it had never been enforced. Further, Gulf's elites could take special precautions to minimize the possibility of detection. Corporate funds could be twice laundered, listing them as deferred charges and then passing them through a sleepy Bahamian subsidiary. Finally, if the remote did occur and Gulf's criminal actions somehow did come to the attention of law enforcement agencies, the consequences certainly would not be serious. Stockholders were unlikely to react negatively since Gulf's actions clearly were intended to increase corporate profits. And, government could fine Gulf, but the amount would not be large. Government was not in the business of crippling important corporations with large fines.

Not only were opportunities for rationalization numerous, they also were essentially accurate. Gulf was at a disadvantage as compared to the over 300 other corporations known to have made illegal contributions. Disclosure literally was an accident. Stockholders were not upset, as stock prices increased[41] in the months following disclosure. And Gulf was fined only $5,000.

b. Social roles in large organizations. Social roles are the smallest subunits of organizations.[42] Associated with each role are a limited set of work-related expectations. Social roles are integrated with one another to facilitate attainment of organizational goals. Typically role interpretation is hierarchial with role occupants of one level responsive to the direction of their organizational superiors. Generally individuals are not encouraged or rewarded for looking beyond their particular role requirements.[43]

Once corporate crime is set in motion by top-level executives, the nature of social roles in large organizations limits the information and responsibilities of other participants. Most of the individuals who participated in Gulf's criminal actions did not have, need, or probably want complete information. Additionally, none had complete responsibility. They simply had to do what was decided for them as part of their jobs. This was true for individuals occupying roles at all levels of Gulf.

Consider the limited information and responsibility of Gulf's Comptrollers.[44] As can be seen in Table 1, three individuals followed the Comptroller who helped launch Gulf's criminal actions. None of the three had to make any difficult decisions, much less involve themselves in criminal actions. All they were told was that they would receive requests for money from certain employees. All they did was write notes to Treasurers asking that these employees be provided the requested money.

TABLE 1

Persons Occupying Four Top-Level Positions Within Gulf Oil, 1958-1973[a]

Chief Executive Officer & Chairman of the Board	Comptroller	Treasurer	General Counsel
W. Whiteford[b] 1958-1965	W. Grummer[b] 1958-1964	H. Moorhead 1958-1972	A. Gray[b] 1959-1960
E. D. Brockett 1965-1971	W. Henry 1964-1966	P. Weyrauch 1972-1973	D. Searls 1960-1961
R. Dorsey 1971-1973	F. Anderson 1966-1968		R. Savage 1961-1969
	F. Deering 1968-1973		M. Minks 1969-1973

a Source for this information is: Securities and Exchange Commission v. Gulf Oil Corporation, Civil Action No. 75-0324, United States District Court, District of Columbia, Report of the Special Review Committee of the Board of Directors of Gulf Oil Corporation, December 30, 1975, pp. 64-85.

b Initiator of laundering and illegal campaign contributions operations.

Gulf's Treasurers also knew and did little. All they were told was that the Bahamas Exploration account was "highly sensitive and confidential."[45] All they did was send checks to that account upon receipt of a note from a Comptroller.

Tens of other Gulf employees engaged in similar actions. John Brooks describes one of Gulf's money-toting bagmen:

> Most often the delivery would be at an airport or at the recipient's office, but occasionally it would be at a place suggestive of a desire for secrecy. . . . In 1970 he handed an envelope to Representative Richard L. Roudebush, of Indiana . . . in the men's washroom of a motel in Indianapolis. . . . Time and again, asked . . . whether he knew what was in the envelope he had delivered, he replied, "I do not," or "I have no knowledge." A minor figure . . . apparently content to spin constantly above the cities, plains, and mountains of America, not knowing why, not wanting to know why. . . .[46]

Corporate criminality is made easy for individuals by the nature of social roles in large organizations. Most participants have only limited information. Most have responsiblities which in themselves are not illegal. Although the sum of these work-related actions is corporate criminality, it generally does not seem that way to individual employees.

c. Selecting and training loyal employees. All organizations have sensitive and important secrets[47] and thus are dependent upon the loyalty of employees. Additionally, all organizations engage in actions which could prove embarrassing were they to be stripped of their organizational context and displayed in a public arena.

Organizations therefore select and train loyal employees. Selection involves searching applicants for signs of loyalty. The major sign of loyalty is similarity, being like the people who previously have proven loyal to the corporation:

> Forces stemming from organizational situations help . . . promote social conformity as a standard for conduct . . . managers choose others who can be "trusted." And thus they reproduce themselves in kind. . . . Forces insisting that trust means total dedication and non-diffuse loyalty . . . serve to exclude those . . . who are seen as incapable of such single-minded attachment.[48]

Training of new organizational members involves verification of the loyalty of those selected. The technique is

a gradual and piece meal introduction of the corporation's sensitive and important secrets.[49] No one individual, especially initially, need know all or even most of what the corporation is doing. All that is required is a willingness to do one's job, to keep safe bits and pieces of secrets. With time, with sufficient verification of loyalty, and as the need arises, particularly loyal employees are rewarded with promotion and thus exposure to more complete and important secrets.

Gulf's employees were the loyal products of these routine selection and training procedures. Not one went public with rumor or evidence of criminality. Not one took advantage of numerous opportunities for personal enrichment.

Rumor and evidence of criminality were widespread within Gulf as an organization. Comptrollers received cautious instructions to write notes when told to do so by corporate subordinates. Treasurers sent money to the off-the-books account of a subsidiary that never did much of anything. Typists and clerks told jokes and stories of men with "the little black bags"[50] of Gulf money. No Gulf employee went public with information of their corporation's criminal actions.

Large numbers of Gulf employees had easy access to over $5 million of essentially untraceable corporate funds. For obvious reasons formal records were not kept so there was no reliable method of verifying that laundered corporate funds actually had been delivered. Despite numerous opportunities, those involved were "corporate Boy Scouts," totally "trustworthy, loyal . . . thrifty, brave . . ." in their roles as Gulf employees:

> No evidence has been uncovered or disclosed which established that any officer, director, or employee of Gulf personally profited or benefitted by or through any use of corporate funds for contributions, gifts, entertainment or other expenses related to political activity. Further . . . [there is] . . . no reason to believe or suspect that the motive of the employee or officer involved in such use of corporate funds was anything other than a desire to act solely in . . . the best interests of Gulf and its shareholders.[51]

We now have established some of the origins of Gulf's criminal actions. Until and unless contradictory data become available, we submit that elite access to numerous essentially accurate rationalizations for criminality, the limited information and responsibilities characteristic of social roles in large organizations, and selection and training of loyal employees are among the elements of life in corporations that impel individuals to commit illegal acts.

d. Symbiotic big business-big government relations. However, Gulf's criminal actions would not have been possible were it not for the willing involvement of literally hundreds of recipients. Politicians obviously were selling something Gulf was willing to buy. In order to more fully understand Gulf's actions it is necessary to examine big business-big government relations.

People in top-level positions in government and business have much in common with one another.[52] They generally share common life-styles and values. They frequently exchange positions, moving between positions of power and responsibility in business and government. If there is a difference between persons in government and business, it is that politicians lack direct access to corporate resources.

Persons in government and business also need each other. A Presidential attempt at voluntary price controls needs the cooperation of large corporations. Corporations need government assistance in protecting certain markets from foreign competition.

This regular contact and cooperation signals symbiotic rather than adversarial relations, as Economist Daniel R. Fusfeld has noted:

> The United States has moved well down the path toward a corporate state. Economic power is concentrated in the hands of a relatively few super-corporations . . . . Political power has shifted heavily into the hands of the executive branch of the federal government. . . . These two centers of economic and political power have developed a growing symbiosis.[53]

When looked at in this way, Gulf Oil and the Watergate burglary it helped fund emerge as part of the symbiotic fabric of the corporate state. Gulf's actions were part of an exchange relationship in which each party fully expected to benefit, and most likely did.

For the politicians who run government, Gulf and other contributing corporations were solving a problem by providing politicians access to corporate resources. Being a politician is costly and having access to money is fundamental to political success. The higher the office or grander the ambition, the more costly it is to be a politician. To Spiro Agnew, for instance, the corporate and other contributions and kickbacks which ultimately forced his resignation were:

> . . . essential to survival, a basic platform from which he could continue to pursue higher office. Having entered big time politics without benefit of

> wealth. . . . He accepted groceries from a supermarket executive. His restaurant tabs were picked up. . . . He used funds given . . . him when he was Governor to stock a winecellar. . . .[54]

In exchange politicians did not have to sell their votes or themselves. All Gulf was paying politicians for was the predictability all corporations need to survive and prosper.[55] Gulf's chief complaint was that inconsistent government regulations were making rational calculations difficult. It was asking and paying for a more consistent set of regulations, ones which would permit the "calculable adjudication and administration"[56] fundamental to the existence and growth of corporate capitalism. The precise content of the regulations was less important than calculability of their consequences.[57].

Gulf's criminal actions thus were indicative of the shared interests of big business and big government. They were a routine and accidentally discovered part of the symbiotic fabric of the contemporary corporate state.

D. Summary and Conclusions

This paper examined corporate violations of The Corrupt Practices Act. We sketched the origins of the Act and its enforcement following the Watergate break-in. We described and analyzed the actions of one corporate violator, the Gulf Oil Corporation.

We draw three conclusions from our efforts. First, as compared to the origins of vagrancy,[58] marihuana,[59] sexual psychopath,[60] and other criminal laws[61] primarily applicable to individuals, considerably less is known about laws primarily applicable to corporations. Our brief sketch of the Corrupt Practices Act suggests that it is possible to examine the "criminalization of corporate behavior."[62]

Second, as compared to the generally detailed description of the actions of particular delinquents,[63] professional thieves,[64] fences,[65] and addicts,[66] much less is known about the actions of criminal corporations. Our description of Gulf's actions suggests that it is possible to begin to provide material descriptive of the actions of criminal corporations.

Third, our analysis of Gulf's actions suggests that it is possible to devote primary attention to the organizational and environmental pressures which impel individuals in the direction of corporate crime. We believe we have helped demonstrate that it is useful to emphasize "organizational as opposed to individual etiological factors . . ."[67] in probing the origins of corporate crime.

FOOTNOTES

1. For a history of corporate chartering, see: David Finn, The Corporate Oligarch (New York: Simon and Schuster, 1969); Ronald E. Seavoy, "The Public Service Origins of the American Business Corporation," The Business History Reviw 52 (Spring 1978): 30-60.

2. See: Paul J. McNulty, "The Public Side of Private Enterprise: A Historical Perspective on American Business & Government," Columbia Journal of World Busines 13 (Winter 1978): 122-130.

3. See: Seavoy, "The Public Service."

4. For a particularly clear example see: Ted Nicholas, How to Form Your Own Corporation Without a Lawyer for Under $50.00 (Wilmington, Delaware: Enterprise Publishing Company, 1972). Mr. Nicholas advocates incorporating in Delaware since the state is dependent upon corporate charter fee revenue and thus places very few restrictions on corporations.

5. Edwin H. Sutherland, White Collar Crime (New York: Holt, Rinehart & Winston, 1949), p. 32.

6. Securities and Exchange Commission, Plaintiff v. Gulf Oil Corporation, Claude C. Wild, Jr., Defendants, Civil Action No. 75-0324, United States District Court, For the District of Columbia, Report of the Special Review Committee of the Board of Directors of Gulf Oil Corporation. December 30, 1975, p. 3. This document will hereafter be identified as SEC, Report.

7. Materials for this section are derived from: Herbert Alexander (ed.), Political Financing (Beverly Hills: Sage, 1979); Perry Belmont, Return to Secret Party Funds (New York: G.P. Putnam's, 1927), reprinted in New York by Arno Press, 1974; Louise Overbacker, Money in Elections (New York: Macmillan, 1932), reprinted in New York by Arno Press, 1974; Lester A. Sobel (ed.), Money and Politics: Contributions, Campaign Abuses & the Law (New York: Facts on File Inc., 1974).

8. Overbacker, Money, p. 175.

9. Overbacker, Money, p. 234.

10. Quoted in Belmont, Return, p. 175.

11. Belmont, Return, p. 47.

12. Overbacker, Money, p. 240.

13. Overbacker, Money, p. 294.

14. Overbacker, Money, p. 337.

15. SEC, Report, p. 7.

16. Carl Bernstein and Robert Woodward, All the President's Men (New York: Warner Paperback Library, 1975), p. 16.

17. Bernstein and Woodward, All the President's Men, pp. 20-23.

18. Leon Jaworski, The Right and the Power: The Prosecution of Watergate (New York: Simon and Schuster, Pocket Books, 1977), p. 21.

19. SEC, Report, p. 7.

20. Jaworski, The Right, pp. 344-345.

21. Jaworski, The Right, pp. 344-345.

22. SEC, Report. Also see: John Brooks, "The Bagman," in Rosabeth Moss Kanter and Barry A. Stein (eds.), Life in Organizations: Workplaces As People Experience Them (New York: Basic Books, Inc., Publishers, 1979), pp. 363-372.

23. Marshall B. Clinard, Illegal Corporate Behavior (Washington, D.C.: U.S. Government Printing Office, 1979, Stock Number 027-000-00843-7), p. 200.

24. All of what follows is from SEC, Report, pp. 31-92, pp. 199-298, and appendices A - D. The page locations of specific quotations will be identified. Also see: Brooks, "The Bagman."

25. SEC, Report, p. 62.

26. SEC, Report, p. 62.

27. SEC, Report, p. 62.

28. For a discussion of laundering in the context of "Watergate" see: Bernstein and Woodward, All the President's Men, pp. 38ff.

29. SEC, Report, p. 43.

30. SEC, Report, p. 43.

31. SEC, Report, p. 63.

32. SEC, Report, p. 63.

33. SEC, Report, p. 65.

34. SEC, Report, p. 66.

35. SEC, Report, p. 66.

36. SEC, Report, p. 70.

37. SEC, Report, p. 71.

38. SEC, Report, pp. 64-85.

39. Laura Shill Schrager and James F. Short, Jr., "Toward a Sociology of Organizational Crime," Social Problems 25 (April, 1978): 410.

40. The imagery and vocabulary advanced in our discussion of rationalizations are from: Gresham Sykes and David Matza, "Techniques of Neutralization: A Theory of Delinquency," American Sociological Review 22 (1957): 664-670.

41. Brooks, "The Bagman," p. 372.

42. For a general discussion of this point see Marvin E. Olsen, The Process of Social Organization (New York: Holt, Rinehart, and Winston, 1968), pp. 103ff.

43. See: Diane Rothbard Margolis, The Managers: Corporate Life in America (New York: William Morrow & Company, Inc., 1979), pp. 54-66; Clinard, Illegal, pp. 3-10.

44. Based upon SEC, Report, pp. 242-266.

45. SEC, Report, p. 223.

46. Brooks, "The Bagman," p. 369.

47. For an early discussion of this point see: Max Weber, On Law in Economy and Society, edited and annotated by Max Rheinstein, translated by Edward Shils and Max Rheinstein (New York: Simon and Schuster, 1967), pp. 334-335.

48. Rosabeth Moss Kanter, Men and Women of the Corporation (New York: Basic Books, Inc., Publishers, 1977), p. 68.

49. All of the persons with access to Gulf's sensitive and important criminal secrets had served long corporate apprenticeships. See: SEC, Report, pp. 242-266.

50. SEC, Report, p. 223.

51. SEC, Report, pp. 216-217.

52. See: C. Wright Mills, The Power Elite (New York: Oxford University Press, 1956); Michael Useem, "Studying the Corporation and the Corporation Elite," The American Sociologist 14 (May, 1979): 97-107; Gwen Moore, "The Structure of a National Elite Network," American Sociological Review 44 (October, 1979): 673-692.

53. Daniel R. Fusfeld, "The Rise of the Corporate State in America," Journal of Economic Issues 6 (March, 1972): 1. See also Arthur S. Miller, The Modern Corporate State: Private Governments and the American Constitution (Westport, Conn.: Greenwood Press, 1976).

54. James M. Naughton, John Crewdson, Ben Franklin, Christopher Lydon, and Agie Solpukas, "How Agnew Bartered His Office to Keep from Going to Prison," in Gilbert Geis and Robert Meier, (eds.), White-Collar Crime: Offenses in Business, Politics, and the Professions (New York: The Free Press, 1977), p. 226.

55. For a discussion see: Neal Shover, "The Criminalization of Corporate Behavior: Federal Surface Coal Mining," in Gilbert Geis and Ezra Stotland (eds.), White-Collar Crime (Beverly Hills: Sage Publications, 1980), pp. 98-125.

56. Max Weber, General Economic History, translated by F. N. Knight (New York: Collier Books, 1961), p. 208, cited in Shover, "Federal Surface Coal Mining," p. 123.

57. See Shover, "Federal Surface Coal Mining."

58. William Chambliss, "A Sociological Analysis of the Law of Vagrancy," Socal Problems 12 (1964): 66-77.

59. Howard S. Becker, Outsiders: Studies in the Sociology of Deviance (New York: The Free Press, 1963), pp. 121-162.

60. Edwin H. Sutherland, "The Diffusion of Sexual Psychopath Laws," American Journal of Sociology LVI (September, 1950): 142-148.

61. See: Anthony M. Platt, The Child Savers (Chicago: University of Chicago Press, 1969).

62. Shover, "The Criminalization."

63. Clifford R. Shaw, The Jack-Roller: A Delinquent Boy's Own Story (Chicago: University of Chicago Press, 1930).

64. Edwin H. Sutherland, The Professional Thief (Chicago: University of Chicago Press, 1937).

65. Carl B. Klockars, The Professional Fence (New York: The Free Press, 1974).

66. Richard P. Rettig, Manual J. Torres, and Gerald R. Garrett, Manny: A Criminal - Addict's Story (Boston: Houghton Mifflin Company, 1977).

67. Schrager and Short, "Toward," p. 410.

IV. THE ROLE OF LAW ENFORCEMENT IN THE FIGHT AGAINST WHITE-COLLAR CRIME

Ezra Stotland
University of Washington

A. Introduction

White-collar crime is a total national problem. It occurs in government, in business, and in not-for-profit enterprises; on the streets, in people's homes, and in hotel rooms. It is perpetuated by con-men, businessmen, housewives, and almost all professionals. It ranges in size and scope from the smallest bank examiner fraud, to multi-national theft. In fact, we export our "surplus" crime to other countries.

Such a pervasive national problem obviously requires a pervasive national effort to control and even eradicate it. Focusing efforts to control it on just one part or locus of its occurrence, except for pragmatic reasons of limited resources, can only have a temporary effect, as well as a limited one. If the unethical, illegal standards of behavior in one part of the marketplace are implicitly condoned by the establishment's ignoring that part, then sooner or later these standards will begin to generalize to other parts. Some potential criminals would perceive it as "inequitable" not to have the same chance as others to make a fast buck or make many bucks slowly but illegally. Some law enforcement officials and regulatory agency personnel may implicitly, though very covertly, share the same outlook. Thus, no segment of our national life should be overlooked as a potential locus of illicit white-collar actions.

Yet the effort to control and eradicate white-collar crime has tended to be piece meal and sporadic. Some federal agencies have dealt with the problem much more vigorously and consistently than other parts. In some states, law enforcement and regulatory agencies have likewise been diligent, in others, not; likewise at the local level. This uneven crime control effort has contributed to the movement rather than the control of crime; to the perpetrators' waiting out enforcement efforts, rather than giving up crime; the uncertainty and ambiguity of our ethical/legal standards in the eyes of many.

Obviously, what is needed is a many-fronted, consistent, long-term effort to control and eradicate white-collar crime, involving all of the appropriate regulatory and law enforcement agencies. Such an effort not only requires that many agencies be involved, but that a whole range of tools be available: from the most gentle administrative reprimand, through civil court

actions, to criminal sanctions. Different types of loci of crime require different remedies, but all should be available to be used when appropriate.

One of the greatest untapped reservoirs of manpower and organization we have to mobilize in the effort is the police. As will be articulated below, the police can make many unique and highly significant contributions to the total effort, as well as providing sheer volume of energy and personnel to the total national effort. The purpose of this paper is both to articulate what some of these contributions might be and to support some very specific lines of research which can enhance these efforts.

The role of police officers and departments in the fight against white-collar crime has only recently begun to be recognized and appreciated. Each year, more large urban departments have established units which deal with white-collar crime, going well beyond the traditional limits of police work of street bunco, simple embezzlements, forgeries, rubber checks, etc. Special investigative units dealing with more complex, large-scale white-collar crime have been established in Los Angeles, Chicago, San Francisco, Portland, Atlanta, New York, etc., all but the first having been inaugurated fairly recently. State police or similar agencies have had such units in Michigan, New Jersey, Washington, and California. The FBI has recently made white-collar crime one of its very top priority crimes, with spectacular results, as it shifts from bank robbery to robbery of banks. The International Association of Chiefs of Police has recently produced a series of a half dozen training keys focusing on white-collar crime. Its organ, Police Chief, has published a number of articles on white-collar crime in the past two or three years. Police officers have applied in increasing numbers for training at the Battelle National Center on White-Collar Crime. No doubt the FBI's efforts will inspire local and state departments to enhance their efforts in fighting white-collar crime.

These developments have not been part of a concerted, directed effort. No clarion call has been heard at a convention of police chiefs or police detectives. No chief has emerged as a leader in this effort, although Patrick Murphy, President of the Police Foundation, has strongly endorsed such efforts. No standards, no goals have been articulated beyond the obvious ones of investigating certain types of fraud, forgery, embezzlement, etc. Issues regarding the unique contribution that police can make, regarding the most effective way of organizing and conducting the police effort, regarding the effects that the participation of the police will have on the police themselves, regarding the most effective way of meshing the police efforts with other branches of the criminal and civil justice systems, none of these issues have been addressed to any

significant degree; and obviously, systematic research on these issues can be of great benefit both to the police and to other cognate parts of the justice system.

In this paper, we will first address the question of the special, if not unique, values of involving the police in the fight against white-collar crime. Some of the values of a total national effort, including the police, were set forth above. But the specific contributions of the police need to be articulated, in addition to some values more or less unique to the police.

In the next section of the paper, we will examine the traditional police role of gathering information to consider the possibility that this role can be extended into the area of white-collar crime. As we will show, information on white-collar crime can come to the police in the normal course of their activities, or it can be sought out more proactively by the police. Programs to enhance police effectiveness in this regard, as well as research to evaluate them, will be proposed.

Following this discussion of the theoretical possibility of such police activities, we will address the problem of their practical feasibility and of the motivation of police officers to engage in them. Possible pilot studies on these issues are described.

These considerations lead into the next section dealing with the ways in which police agencies can be organized to function most effectively in the area of white-collar crime. There are many organizational problems which plague both police and other law enforcement agencies which need to be addressed and researched, including methods to evaluate performance and effectiveness.

Finally, we will face the whole issue of the difficulty of knowing how to deploy resources for the most effective, long-range efforts, i.e., the issue of strategic intelligence to provide a basis for the mobilization of police and other agencies.

1. The value of involving the police in fighting white-collar crime. One main value of involving police in the fight against white-collar crime is simply that they can provide a great deal of information for investigative or intelligence purposes. It is obvious that the enormity of the problem means that the federal government can only deal with a part of the problem. Their functioning out in the community, on the streets, in stores, in homes, can provide eyes and ears to observe possible crimes which office-bound or office-based personnel may very well never encounter. The police may be able to alert the criminal justice system to white-collar crimes

early in their development, before they reach the stage in which many more people have been hurt.

There are additional reasons for involving the police in the effort against white-collar crime. First, the activities of the criminal justice system against white-collar crime have multiple functions, one of them being to educate the population at large that society is demanding closer adherence to legal and ethical standards in the marketplace. Unless the public at large appreciates and supports these efforts, the fight against white-collar crime will be lost in the long run. Having the police participate greatly enhances the educational effort on the populace, especially since the very involvement of the police communicates clearly that this type of crime is considered as wrong as "blue-collar" crime. The sense that the "big cats" get away with it, while the little ones don't, would be somewhat reduced by having the same agency go after both sizes of cats. The notion that the public really does not care if the big, white-collared cats get away and is willing to overlook such animals may not now be true, or may not have ever been true. However, recent research by Wolfgang (1980), and by Short and Schrager (1980), has shown that the public does, in fact, take white-collar crime seriously, and thus would be impressed that society, including the police, is moving against it.

Second, the involvement of the police tends to assure that the criminal remedy is not neglected, because of their very presence and of their articulateness. This is not to argue that the criminal remedy is the only significant one to be used against white-collar crime, but that all remedies need to be kept available so that the most appropriate one can be used in specific cases. Brintnall (1978) reports that more of the investigations in which the police assisted the prosecutor lead to criminal prosecution than did those in which the prosecutor had help from other agencies or no help from outside entities.

Third, the publicness of the police involvement would tend in many areas, such as ghettos, to aid in the fight against common crime. Greater rapport with the community by helping, say, residents of a ghetto or a barrio against a consumer defrauder, could lead to more cooperation with the police in fighting common crime. This cooperation can take the form of reporting more crimes sooner, willingness to be a witness, and, as has been found in some storefront police sub-stations, even turning in fugitives.

Fourth, the recent movement of organized criminals into legitimate businesses indicates that not only do organized criminals commit white-collar crimes in conducting their traditional activities, but they can reasonably be expected, in the long run, to commit more common white-collar crimes in their

newly acquired legitimate businesses. Thus, the involvement of the police as the natural enemies of organized crime brings to bear significant additional resources against white-collar crime. Fights against both types of crime will benefit, and there is less likelihood that certain types of crime will escape detection by falling between the two types of targeting agencies.

The police are chronically placed in situations in which they are subjected to corrupting influences. Sub-cultures have frequently developed in police departments which tolerate at least some corruption, and police scandals are, sadly, not rare events. Since such scandals often are a form of white-collar crime, a police officer's active participation in the fight against white-collar crime outside of his department may very well lead him to become less tolerant of it in his own department. Social psychological research has indicated that actions which an individual chooses to take, when these actions violate his private attitudes, actually lead to a change of such attitudes to be more consistent with the actions. Thus, an officer with a relaxed approach to extortion conducted by his colleagues might become indignant toward them after he has worked on white-collar crime cases, and he made many choices among courses of actions while doing so. Since measures of the degree of corruption in police departments (Sherman, 1978) and measures of police officers' views of corruption have been developed, before-after studies of the effect of fighting white-collar crime on police corruption are clearly feasible.

2. <u>Police as potential sources of information regarding white-collar crime</u>. We have now seen some of the values of involving the police in the fight against white-collar crime. The next issue concerns the types of white-collar crime police are likely to detect.

It is obvious that there are some forms of white-collar crime that would be very unlikely to come to the attention of even the most diligent and observant police officer, such as false billing, advance fee schemes, churning, stock fraud, etc. Nevertheless, there are many forms that can, in principle, come to the attention of the observant or even non-observant police officer. Brintnall (1978) reports that in the 35 jurisdictions in the Economic Crime Project the police referrals were the source of only 3 percent of the prosecutors' cases, but the losses to the victims in these cases were much the same as for other cases; i.e., the police were involved in cases far beyond the typical bunco case and petty embezzlement. Some examples of this will be given below, and then research strategies presented for determining, first, the amount of relevant information that could in fact be gathered by police officers under optimal conditions; and, second, the amount of such information that is in fact at least noticed by the police.

The first set of crimes are those whose manifestations an officer can notice in the ordinary course of his work, without any victims or witnesses informing him.

a. Automobile insurance fraud. ("Accidental" damage to vehicles). Insurance companies estimate that around 10 percent of claims against them are fraudulent. Information on the signs of insurance fraud have already been developed by the Insurance Crime Protection Institute. The signs of a contrived automobile accident have been spelled out in detail in Training Key 241, a publication of the International Association of Chiefs of Police (1976). Among the indicators of a contrived accident are crash scenes at places where the volume and type of traffic will of necessity distract an officer's attention; crash locales in dark areas on rainy nights; victims in different cars who appear to be acquainted, who "know insurance" too well and point up the amount of damage; at fault drivers who "confess" too readily; "painful" injuries with little outward sign, such as whiplash; declinations of treatment at the scene; cars that have obviously been damaged before, presumably in previous "accidents"; absence of appropriate skid marks; etc.

Signs of a "paper" accident are also cited in that training key: The victim reports the accident with an "over the counter" police report; reports of soft tissue injuries, such as back strains; one person reporting for two drivers; inconsistencies in the VIN number; both vehicles reportedly sent to the same repair shop; lack of witnesses; too complete knowledge by one driver of the other's personal and insurance situation; etc.

b. Staged residential burglaries. Many police officers are cynical about the validity of a large percentage of the burglaries reported to them, since a police report is usually required in order to collect burglary insurance. The same IACP training key points out that amateurish burglaries may be fraudulent; that fraud may be indicated by an unlikely place of entry or damage at the point of entry inconsistent with a real burglary. Other signs of staged burglaries are reports of losses inconsistent with the person's life-style, a series of reported break-ins, etc.

c. Staged commercial burglaries. These can be perpetuated by both employees and by employers. Signs might include remarks by employees that the missing stock was recently moved elsewhere; burglaries that appear to be inside jobs; etc.

For each of the above types of insurance fraud, it would be very helpful to patrol officers, to detectives, and to managers of investigations to know which of the signs of fraud is most indicative both of a fraud and of a prosecutable fraud. The earlier in the process of investigation the officer or supervisor can determine whether enough of these cues are

present, the sooner can decisions about pursuing an investigation be made, thereby permitting the most efficient use of resources. Thus, one major research project should parallel the one done by SRI on predicting the value of continuing an investigation of a common crime on the basis of information available at the time of the preliminary investigation. (This direction of research is discussed below.)

The suggested research program on insurance fraud will follow a format which we shall call a cyclical research program. This format will be applied below to other types of crime, but will be illustrated by the application to insurance fraud. This research would be performed in steps:

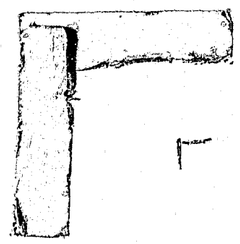
1. Determination of how many of the above-mentioned cues of fraud are actually reported in current accident and burglary reports. This could be done by an examination of both patrol officers' reports and detective reports.

2. Determination of which cases were investigated by the police, and which by insurance investigators; and, in both instances, which cases actually lead to prosecutable cases.

3. Determination of the relationship between the amount and types of information included in current patrol and detective reports on the one hand, and the successful completion of the investigation on the other. The results would give a first approximation of the potential for the use of that information to predict which investigations should be pursued. It would also give a picture of which types of and amounts of information from patrol officers lead detectives to follow through on cases.

4. To determine the possibility of gathering further information, police officers and detectives can be surveyed to determine which of the possible cues of fraud they had noticed in, say, the last accident report they made, but had not reported in writing. It may very well be that officers do not fully report the information because they may not appreciate the significance of what they in fact observe, or may not believe that anyone will bother to investigate the cases in which they do in fact suspect that there is fraud. The influence of these reasons for non-reporting could also be determined in the survey.

5. On the basis of the results of the first four steps, a field experiment could be performed to enhance officer observation and reporting of potential insurance



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fraud, partly through training, partly through improved procedures, partly through enhanced reward systems. The effects of each of these types of upgrading efforts on the reporting of cases, on the initiation and completion of investigation, and on the filing of charges could be examined.

This model of research can be applied to many types of white-collar crime--as will be suggested below. In fact, lists of indicators that white-collar crimes are probably occurring have been developed in spheres in which the police generally do not function. For instance, a list of indicators of probable crimes has been developed for auditors (Sorensen, et al., 1980); for observers of local government (Lyman, Fletcher, and Gardiner, 1978); for stock fraud by the SEC; etc.

d. Home repair fraud. Although there is no institute such as the ICPI in the area of home repair which can establish a formal list of signs of home repair fraud, much is already known by the police, although not formalized. Much can be observed by patrol officers because of the highly organized quality of one group of perpetrators, the Williamson gang. This highly secretive, cohesive, extremely well organized gang has accumulated much wealth by systematically "working" areas in which prime potential victims reside. Some of the external earmarks of the presence of these gangs that have been noticed are:

1. Out-of-state licenses on home repair trucks, especially roofing trucks.
2. The perpetrators living close together in some trailer court regularly used by them.
3. Ownership of very late model, luxury cars; they may keep them only a year and then sell them.
4. Prowling areas in which elderly people reside.
5. Young, very "polished" men making approaches to potential victims.
6. Equipment, especially in roofing trucks, which would not pass any safety test.
7. If confronted, failure to produce a business license. (This also could lead to citation and even an arrest.)
8. A rash of blacktoppings of driveways, reinforcements of chimneys, etc., in a neighborhood.

In addition, many police department detectives and intelligence units have pictures of some of the perpetrators and organizers, so that patrol officers might recognize them on the street.

Obviously, a Cyclical Research Format paralleling the one for insurance fraud could be done in the area of home repair fraud, although it is unlikely that the first step in the research program dealing with current observation and reporting of crime will bear much fruit. On the other hand, some police departments, such as Los Angeles, have already alerted patrol officers from time to time about the Williamsons.

e. Door-to-door salesmen and other street operators. The signs of fraud committed by door-to-door salesmen have not yet been highly articulated, but the presence of young people soliciting from door to door, especially if they are selling magazine subscriptions, may indicate not only a fraud but also an abduction of groups of young people who are transported by adults from locale to locale to perpetrate frauds. The police might observe this type of fraud committed by people who work the streets or go door to door: salesmen of phony burglar alarms; phoney charities; itinerant auto mechanics who will repair "that dent right." Obviously, a research program using the cyclical format could be performed here as well.

f. Consumer fraud. An officer could very well become aware of consumer frauds just by his own observations, without necessarily any input from citizens. These observations are probably more likely to occur if an officer gets to know a district very well by repeatedly patrolling it. For example, he may notice that a close-out sale never ends; a fire sale may occur without a fire; a car may be advertised in the newspaper by a used car dealer, but not actually be obvious on the lot; etc. Again the cyclical research format can be done here.

g. Welfare fraud. As Hutton writes in Police Chief Magazine (1979):

> Indications of welfare fraud are often evident to the peace officer aware of . . . eligibility factors. Simple cohabitation frauds can be seen during calls for service in the home, during disturbing the peace or family fight calls, during checks of driving and vehicle registration records, and during service of arrest warrants (such as for unpaid traffic tickets) at the residence.

(However, as indicated below, reports by police of such probable welfare frauds may lessen the number of calls for service they receive from some neighborhoods, even in the case of serious felonies.)

h. Environmental safety. This is a relatively new area for possible enforcement by police officers; however, the mobility of patrol, their constant observation may prove invaluable (Greenberg, 1979). For example, state police officers in New Jersey were highly instrumental in detecting and investigating the wanton piling up of barrels of toxic wastes in obscure areas under a skyway. Officers may detect other forms of pollution, such as excessive emission from smokestacks, dumping in streams, pile-up of garbage, etc. Again cyclical research can be conducted on how much opportunity there might be for officers to detect this, and to generate prosecutable cases.

i. Other suspicious information encountered through ordinary patrol. No doubt there are other areas besides insurance fraud, home repair fraud, etc., in which the cyclical format can be applied. The areas cited may only be examples. For example, local police in New Jersey observed the diversion of diesel fuel during a period of shortage. There are increasing numbers of instances in which the police have uncovered major white-collar schemes simply in the course of normal police work. A major bank embezzler was detected because an officer investigating the smashing of the rear end of the perpetrator's car lead to the literal uncovering of a large number of bookie slips; a major instance of official corruption was found because an officer examining a car overdue from a rental agency found a cache of government checks; a series of automobile repair frauds were uncovered because one officer noticed that there were regular verbal and fist fights around a given garage between the owner and some customers--who usually called the former a crook. Fraudulently obtained bank cards have been picked up in the course of routine, common-crime arrests.

Sometimes police officers may simply notice unusual events in an area they know well which are suggestive of white-collar crime. A patrol officer became suspicious about the rapid turnover of used cars in a residential driveway and uncovered an odometer roll-back operation; the movement of goods in and out of a business which are not appropriate to that business may indicate a bankruptcy fraud (or a fencing operation); the sudden "unexplainable" wealth of a given citizen may be suspicious; sales of land which is apparently useless or use of land in obviously inappropriate ways.

Research to determine how often these instances occur would be difficult to conduct because the nature of the events attracting the officers' attention varies so much. However, questionnaires to officers about incidents in which their suspicions were aroused but not reported might prove fruitful, as well as possibly recording increases in the number of reports by officers who are sensitized to the problem of white-collar crime in general. This sensitization may occur among officers

who participated in one of the Cyclical Research Programs described above.

3. Communications from citizens/victims. Thus far the focus has been on possibilities of detection of crime through the observation by officers, not from reports to them by victim/witnesses. It is not a rare phenomenon that officers are approached by citizens with complaints about having been cheated. The traditional police response has been to refer the citizen to his/her lawyer, to some non-criminally oriented one. However, there are many cases in which criminals may go undetected because the citizen was too discouraged to seek other help. The police officer encounters the person at the most crucial point, when he is most involved, most motivated to act. The officer can be the symbol of the total governmental establishment, so that a referral to another agency or to his/her lawyer may aggravate a problem because of the disappointment. The citizen may also be frustrated by the delay, the lack of certainty of an effective response from the referee, etc. In any case, we have no clear knowledge of how much valuable information for investigative or intelligence purposes is lost to the criminal justice system because of an ineffective response from the police.

Thus, a survey could be done of police officers to determine the frequency, nature, and setting of citizens telling an officer that they had been cheated. Detailed examination of the officers' recollection of the citizen complaints could suggest whether the complaint indicated that a criminal act had occurred. This act could be any one of a number of types: consumer fraud, automobile repair fraud, pyramid schemes, land fraud (in some locales), as well as traditional street bunco. When police officers are socially integrated into their patrol area, as in team policing or basic car plans, or in small communities, the officers might be the first to learn of more sophisticated crimes, such as stock frauds, land frauds, complex embezzlements, complex frauds against the government, graft, etc., simply because the police officer is a friend to whom people talk, even when they might not believe that the officer can help them in any way. A properly designed research project could determine whether in fact what sort of intelligence is available to the police officers. More than one officer of the author's acquaintance has remarked bitterly about the white-collar crime about which he hears but does not feel he can act. Such research would also shed some light on such issues as the sociological-demographic characteristics of complaining victims, especially if some additional research can be developed to deal with non-complaining victims, or victims who complain to other agencies. The amount of social organization among complaining victims, their status and their role in the community, etc., are also valuable types of information for the police to develop.

Attempts have been made to make the police more available for receiving complaints from citizens, such as the storefront that the Los Angeles Police Department established in a Chicano neighborhood, called (in Spanish) Operation Swindler (Edelhertz, et al., 1977). Local residents can bring their consumer complaints to the office, which is manned by Hispanic officers and workers. The officers taking the complaints can either conduct initial investigations to determine if crimes have possibly occurred, or can refer the cases to their civil law/administration colleagues and officemates from other branches of the municipal government. This storefront has been so successful that others have been established in other, more Caucasian neighborhoods. Similar, probably less effective storefronts have been established in Denver and other cities. The effectiveness of such storefronts in generating useful leads to crimes could easily be researched by examining the files of such units, and studying their histories of operations.

4. Communication from citizen/whistleblowers. If police officers--patrol and detectives--are well integrated into their community, they are highly likely to become known to some of the peripheral, or even central, participants in a scheme. Should any of them ever decide to blow the whistle, sub-rosa or publicly, the police officer would be available to them. These whistleblowers might be peripheral participants who have been cheated by the principals; peripheral participants or principal ones who have finally had pangs of conscience; principals who fear that the scheme is about to be detected and wish to bargain from a position of strength; etc. Patrolmen and detectives may hear about such people; but, often lacking the orientation to deal with white-collar crime, the police may not capitalize on these opportunities to uncover schemes as well as secure excellent witnesses. This sort of communication obviously would be likely only in certain locales, such as jumping off points for off-shore banks; office areas in which boiler room operations might be easily established; etc. In any case, Cyclical Research Programs such as the one for insurance fraud could gather information about the frequency with which police receive such information. This research could also generate valuable information about the whistleblowers themselves: their personal characteristics; their particular position and role in the schemes; their motivation for blowing the whistle, etc. This information could help guide investigators who are attempting to penetrate a conspiracy, as will be elaborated below.

5. Feasibility of police officers becoming sources of information regarding white-collar crime. Given that there is a theoretical possiblity that the police can gather information regarding white-collar crimes, the next question concerns the practicality of having them do so. A common complaint heard about giving the police additional responsibilities is that the

police are overburdened as it is--how can they do more? The retort is that much of the time patrol officers have little to do except preventatively patrol, an activity whose value has seriously been questioned. In fact, boredom on certain shifts in certain areas is a major problem. Much of the free time occurs during the daylight hours Monday through Thursday, time when it is probably most likely that white-collar crimes occur. There is probably little that can be learned about white-collar crime from Saturday night barroom brawls. In any case, the research projects described above could incorporate questions about the times and places in which information was obtained, either by observation or by communication.

6. Motivation of officers to fight white-collar crime. If, as we have argued, it is both theoretically and practically possible for police to detect white-collar crimes, then how motivated would they be to use these opportunities to detect these crimes and criminals? The point made above about police officers' beliefs about white-collar crime raises the general question of the motivation of police officers to fight against white-collar crime. The strength of their motivation is important because police on the street have so much freedom to choose which types of offense to investigate that their motivations and preferences become crucial.

Part of this motivation to work on white-collar crime may be intrinsic to the work itself. Unlike some other additional responsibilities that the police have been asked to assume in recent years, the fight against white-collar crime is a genuine traditional law enforcement function. Many officers appear to delight in the challenge of the work, the opportunity to do some "real" detective work, rather than writing reports about witness-named suspects. Since only 15 percent of police time is really spent dealing with serious felonies, an addition to that time can only legitimately and properly enhance the police officer's view of himself as a crime fighter.

Furthermore, police may simply value honesty in the marketplace as much, if not more, than other citizens. Although police research has often found them conservative in their political outlook, the studies have not directly raised the possibility of police being populists, pitting the man-on-the-street against any organization of great size, be it governmental or private. As Goldstein (1975) writes:

> The average officer--especially in large cities--sees the worst side of humanity. He is exposed to a steady diet of wrongdoing. He becomes intimately familiar with the ways people prey on one another. In the course of this intensive exposure he discovers that dishonesty and corruption are not restricted to those the community sees as criminal. He sees many

individuals of good reputation engaging in practices equally dishonest and corrupt. An officer usually can cite specific instances of reputable citizens defrauding insurance agencies by false claims, hiding earnings to avoid taxes, or obtaining services or merchandise without payment. It is not unusual for him to develop a cynical attitude in which he views corruption as a game in which every person is out to get his share. (p. 25).

The police themselves have no doubt been victimized both personally and as a group. With their 20-year career patterns, many police plan for their post-retirement careers by investing, often in land. Many officers moonlight and may encounter white-collar crime in their second jobs (some have taken it upon themselves to investigate). Obviously, they could be victimized. Recently, charitable fund raising by police has been subject to a good deal of milking by con-men, to the detriment of law enforcement's status and prestige (Ely, 1980).

Furthermore, law enforcement officers may sympathize with certain types of victims, especially those who are relatively defenseless: widows who can be taken by con-men; older people unable to repair their homes; people who have a low comprehension of the English language; families of the terminally ill; etc. For some officers, observation of street bunco and its victims can lead by stages into an interest in large-sized white-collar crime. Police who fill out accident or burglary reports which they suspect are fraudulent may become very angry at being forced to participate in a crime. For a number of reasons, the police might very well have a great latent and perhaps realized motivation to fight against white-collar crime. It is possible that some may prefer to make a more active, involved response to citizen/victims than saying, "Tell it to your lawyer."

The author has already done some pilot research to determine the strength of the motivation of police officers to fight the types of white-collar crime they probably are most likely to encounter. A questionnaire asked officers to indicate how interested they would be in dealing with particular instances of white-collar crime. The instances and the associated questions were presented in the format illustrated in the following example:

> There was a door-to-door encyclopedia business which encouraged customers to buy a set of expensive encyclopedias ($275.00) in order to receive savings on a number of other books and atlases over a ten-year period. The purported "special" or "reduced" price was in fact neither one, and purchasers did not obtain the savings that were promised. The encyclopedia

business declared that contracts could not be cancelled, when in fact state laws gave customers a right to cancel. The business had no intention of ever honoring the promise of savings they had stated. This is a theft in the 2nd degree and constitutes a class C felony. (RCW 9A.56.040).

A) How interested do you think patrolmen would be in enforcing the law in this predicament?

Extremely interested 1 2 3 4 5 6 7 Not at all interested

B) How interested in this particular case do you feel a detective would be?

Extremely interested 1 2 3 4 5 6 7 Not at all interested

C) Can you suggest any ways in which patrolmen can help in this situation?

_____

_____

_____

D) Can you suggest any ways in which detectives can help in this situation?

_____

_____

_____

E) If you were freed of your other duties, how interested would you as a law officer be in fighting this crime?

Extremely interested 1 2 3 4 5 6 7 Not at all interested

Other instances that were used in the questionnaire concerned: Medicaid fraud by a doctor; odometer roll-backs; home improvement fraud committed against a retirement home; automobile repair fraud; a short-weighting food processing company; business opportunity fraud; bait and switch; dangerous children's toys; roof repair fraud. Pilot and exploratory studies were done with 75 police attending a college class and recruits in a police academy (with the help of Carol Crosby, Cindy McCann, Becky Larned, and Harvey Chamberlin).

The questionnaires showed a high degree of internal consistency, with all of the scores on the three questions that were used for each crime for all the situations being significantly correlated across crimes. On a seven point scale with one as the "most interested," the mean score was 4.42 for the question of how interested they thought patrolmen would be in enforcing the law, but when asked how interested they would be if relieved of other duties, the mean rating dropped to 3.55, showing more interest. The standard deviations were 1.8 and 1.9, showing quite a wide spread of close to four points in a seven point scale. In short, the exploratory study showed that there may very well be an attitude toward white-collar crime enforcement which is general across types of crime, that officers as a group would at least show a moderate interest, and that the officers vary greatly as a group in their attitudes toward fighting white-collar crime. In response to the questions about what patrolmen and detectives can do in the situations, very few of the officers answered that they would simply say it was a civil matter for the victim's lawyer, many of them saying that they would make a report for another agency. In further research, it would be valuable to determine how many officers and even investigators feel that the victims, individuals, or organizations are seriously to blame for their losses--even to the point of being unworthy of society's help--because they are essentially victims of their own greed, carelessness, stupidity, etc. If this view is commonly held, then educational programs would be warranted showing the vast range of motives of victims, including the most laudatory, as in charity frauds; and the most human, such as involved in seeking phony therapies. The officers might also learn of the extreme difficulty of preventing victimization because of the cleverness of the perpetrators or the difficulty of getting accurate information.

The research described above is designed to measure the "natural" degree of interest of police officers and others in fighting white-collar crime. However, this can be enhanced in a variety of ways. The results of the type of study suggested above can help to point to the best way to approach officers, what sorts of crimes interest them the most, what sorts of officers are more likely to be interested, etc. Sheer knowledge that these offenses are crimes increases interest. In pilot preliminary tests of the above questionnaire, there were no descriptions of the events as being crimes, and we found that many, if not most, of the officers did not know that they were crimes. When the offenses were identified as crimes in the items themselves, the officers responded quite differently to the questionnaire. Once police officers begin to act on these offenses, they may discover some extraneous motives for fighting white-collar crime. As indicated above, they may find that their rapport with local communities may increase, especially ghetto communities, since they indicate that they are on the

side of justice no matter who the unjust are. This rapport may lead to better law enforcement against common and organized crime, a bonus for the officers, as well as more confidence in the total establishment, as exemplified by the police officer.

Patrick Murphy has suspected that confidence in the police can be enhanced because anti-white-collar crime activity can put the lie to the suspicions that the police have been corrupted by white-collar criminals; otherwise, "how can the crooks survive?" Murphy stated before Congressman Conyers' committee:

> Some of the credibility of the street police officer in today's urban setting is weakened by the existence of white-collar crime about which the officers can do nothing but for which the officer may be blamed by less sophisticated members of the community. Consumer fraud is an example. Even police departments which may be among the most honest and enjoy reputations for integrity are not spared questions of poor people who often assume that the police are somehow part of the consumer fraud problems, that graft, payoff, some kind of cover up may exist. (Conyers Committee, 1977).

The viability and longevity of any police effort to fight white-collar crime depends in part on the strength of the motivation of the involved officers after such anti-white-collar crime activities get under way. Thus, some more sophisticated version of the above-described questionnaire could be administered to police departments which have ongoing anti-white-collar crime efforts, so that the degree of intrinsic and extrinsic rewards experienced by the officers can be measured; e.g., the perceived efficiency of their own work, etc. Furthermore, the perception of the police in the communities could be studied, although measures other than survey questionnaires may be necessary in some situations. The results of both the police study and the community study could be compared to the results of parallel studies in the same department and communities prior to the inception of the increased effort against white-collar crime, or in other departments and communities in which no such efforts have been mounted.

If these studies are done properly, they can uncover obstacles which officers might have experienced: subtle or direct pressure not to pursue powerful targets; complainants about those who use law enforcement as a "bill collector," ceasing their cooperation after the complainee has paid them back or off; difficulties caused by having to investigate a person or group in the community on whom law enforcement is dependent for other, legitimate reasons, such as assistance in tracing stolen and fenced property; etc. Such research might also query investigators on how such problems are dealt with.

Thus far, we have treated the question of motivation at the level of the individual officer, and have not addressed factors which could lead organizations as such to enhance their efforts against white-collar crime. But, without organizational commitment, the individual's own interest dead ends. As mentioned in the opening pages, a number of local and state police departments have recently made a shift in priorities toward the white-collar crime area. It would be a very useful historical research project to determine what political, sociological, or other factors lead to the decision to establish anti-white-collar crime units in police departments. Obviously some of these units have the potentiality of harming powerful entities in the community, so that the political forces strong enough to overcome the apparent resistance can be identified.

7. The organization and techniques of investigation. Up until this point, we have examined the significance and potentiality of police forces to detect white-collar crimes and the degree and type of motivation they have and might develop for action against white-collar crime. We now turn to investigations and more proactive operations by police departments. These investigations and other activities can be conducted in investigative units within police departments, in patrol, or in collaborative efforts between them. We will examine each in turn.

For the most part, patrol officer roles in the anti-white-collar crime effort are most effective in the area of detection and preliminary investigation. Officers can receive training and information about white-collar crime in the police academies, but also in roll calls and during in-service training. The Los Angeles Police Department has produced a series of flyers to be given to police officers at roll call which vividly describe current ongoing schemes, giving the officers not only information on how to detect the outward signs of white-collar crimes but also on how to conduct preliminary investigations. For example, if a home repair fraud is suspected, one or two officers in a car might approach the probable victim out of earshot of the suspect, while his partner engages the suspect in distracting conversation. The first officer can simply ask the probable victim if the suspect made him/her a business offer--and if he did, ask him for his business license. Or the officers might secure information about the elements of a consumer fraud, so that they can interview witnesses with better results. The IACP Training Keys mentioned above also point in these directions, and supply much information on the legal elements of a consumer fraud. Other materials could also be developed, such as an equivalent of the 49-page, pocket-sized "Police Guide on Organized Crime" (LEAA, 1972). In any case, the effectiveness of this type of training can be evaluated, partly by questionnaires testing knowledge of controls, but mostly by asking officers about the practical

value of the type of information. How has it helped them in preliminary investigations? Although attractiveness, interest, and informativeness of such handouts are important, the key evaluation variable is the usefulness.

Perhaps more important than an evaluation of these training techniques is a study of the system of information flow, decision making, and rewards/punishments in the relationship among street officers, their immediate supervisors, and detective units which are assigned to work on white-collar crime. Since a patrol officer has the technical ability and resources to do complete investigations on only a few of the incidents which he uncovers, it is important to find out what happens to his initial report (and whether the patrol officer even learns about the fate of his report); what immediate, personal help he gets from detectives when he needs further help in investigation; who gets the credit for any arrests, patrolmen or detectives; how much personal contact is there between detectives and patrolmen; how often the detectives go to roll call to describe the latest scheme or current prime suspects or fugitives; how is information collected so as to detect patterns readily; etc. The Rand study of the Investigative Function in police departments uncovered many anomalies, and emphasized the need for collaboration between the two types of police officers. If their departments are properly organized, patrolmen should receive credit for cases which they may only have opened, with the detectives following through on the referred cases. A systems analysis of the relationship between white-collar crime detective units and patrol could very well be very valuable for police managers.

The possibilities of very positive relations between state investigative agencies and local and state police are articulated by Steir (p. 208, Conyers Committee, 1977), the director of the New Jersey State Department of Justice:

> And I know now that with the development of a sense of pride, a sense of accomplishment in law enforcement in this state, the quality of law enforcement at all levels has been upgraded . . . we devote a great deal of these resources to strengthening, bolstering, training the county and local level law enforcement.

He reports that local officers make more referrals, and more arrests.

An important part of this system is decision making on which leads to follow up, which cases to investigate. There are two related, but separable types of issues involved in such decisions: the possibility of successfully completing an investigation, and the significance of the case. This latter issue also bears on the problem of evaluating white-collar crime

investigative units and will be discussed below. The issue of judging the probable success of cases is very important because investigators frequently take a long time and are very demanding of resources. As mentioned earlier a clue to how to grapple with this problem may be derived from the recent development of methods for predicting the fruitfulness of investigators of a crime of a particular type, such as burglary. These methods involve a checklist of items such as availability of eye witnesses, knowledge of serial numbers of stolen goods, etc. Given the great range and growing variety of white-collar crimes, it would be nigh but impossible to develop a system as specific and concrete as those being developed for common crime. Nevertheless, some broad categories of checklist items might be developed for broader categories of crime. Bowley (1979) suggests the number of victims and their location in the jurisdiction. The articulateness and the judged reliability of witnesses might be included. Edelhertz' (1977) analysis of the elements of fraud could constitute a framework for developing such a checklist for white-collar crimes that appear to be frauds (and not, say, embezzlements or computer crimes). The value of such a checklist might first be tested by going through archival data and recording whether or not information in each one of the categories of the elements of the crime was available at the end of the preliminary investigation, and then determining whether the number of elements about which there was information correlated with successful completion of the investigation, or whether the presence of information with respect to a sub-set of elements was sufficiently predictive. As Richards (1977) points out, it may be necessary to continue the preliminary investigation to provide information with respect to parts of the checklist about which little is known one way or the other. He also points out that unless the investigations begin to show some direction, some movement, the detectives will soon lose their motivation, waste time, etc.; the proper selection of cases for long-term investigation is crucial. This procedure might be especially helpful in the area of consumer fraud, since there are many non-police as well as police agencies receiving a very high volume of complaints, only a small percentage of which actually involve crime. Consumer fraud may be a sufficiently delimited area to make it possible to have a rather specific and concrete checklist.

The results of this analysis could then provide the basis for testing the model in a predictive fashion on current investigations. The value of formalizing the process of decision making could be tested by determining whether the rate of successful completion of investigations was higher than when some comparable procedure was used.

When investigations go beyond the initial, preliminary stage, the requisite skills become more complex and sophisticated. These skills may be more available in police

departments than might be assumed, since many officers moonlight, make investments for their early retirement, study law, etc. However, the possibility of hiring accountants, former businessmen, etc., as civilian members of fraud investigative units should not be overlooked, although the benefits of having such units consist mainly of sworn officers were set forth above.

One major area of difficulty in the investigation of white-collar crime by police, as well as any other agency, is the time involved. The enormous amount of detailed researching of records and tracing of paper along the trail often makes the task very formidable, so that some important cases may have to be overlooked because of consideration of resources and time. Although computers may help in many instances, this is not always the case--and some methods of speeding up the scanning of paper to detect certain information would be of enormous assistance. For instance, computers which read may perhaps be devised to search through bank checks for numbers and/or names that are specifiable in advance. The world of business machines may have devices now in use which could be easily adapted for investigative purposes.

In the section on detection of white-collar crime, it was pointed out that research on whistleblowers would be quite valuable. Most white-collar crime is initially detected by personal communication, by reports, tips, complaints, rather than by close observation by government or private monitors. Although we have argued above that much more can be done to facilitate detection by such monitors, personal reports will always be of great significance, so that it is important to maximize the input from these sources. Studies of such people would also be of great value for the investigative process in which the investigators are no longer in the position of simply being available if some victim/witness or participant decides to communicate with the police. In most investigations, the process is more proactive, the investigator seeking out possible informants and/or witnesses. Thus studies could be done on the demographic, organizational, experiential, and personal characteristics of persons who are whistleblowers of various types: witnesses, victims, or participants who cooperate with law enforcement on request, or who do so only on a basis of bargaining or under pressure, etc. Such research could use data from the various hot lines, investigators, investigative reporters, prosecutors, etc., and where possible, from the whistleblowers themselves. This information could be coded into various categories which could be defined broadly enough to be applicable to all sorts of informants. Such information would provide systematic information about the demographics of whistleblowers and whistleblowing, as compared to other peoples; the "moral careers" of their involvement; the whistleblowers' positions in the conspiracy, peripheral or central; the role of

persons in logistical support roles, such as advertising agents, printers; the role of competitors as whistleblowers; the immediate cause and basic motivation for blowing the whistle; the obstacles--organizational, personal, etc.--to doing so. Bogen (1978) honestly discusses ways in which management might "handle" potential whistleblowers in industry so as to minimize their "disruption" of the organization, while Peters and Branch (1972) document the ways in which whistleblowers have been punished by their organizations. Some journalistic work has already been done on whistleblowers (Nader, Petkas, and Blackwell, 1972) which suggests such hypotheses as whistleblowers being people who have group affiliations outside a conspiracy; of people who have been mistreated by the other conspirators; etc. This information may be of great value to investigators. As Condon (undated) points out, choosing a "safe" but informed person to approach is often difficult, and making a mistake in choosing an informant can expose an otherwise secret investigation.

A problem in recent complex (or even simple) investigation is that prime attention is given to the collection of data, and even to the organization of such data in flow charts, PERC charts, organizational charts, etc., by crime analysts. However, the availability and organization of such information does not guarantee that the investigators or their supervisors will be able to think through some of the problems and possibilities. Psychology has shown repeatedly that it is only too natural to fit incoming, new information into a pre-existing set of ideas, concepts, mental organizations of data. These mental sets may sometimes--we can't tell how often--blind the investigator about what actually occurred and thereby have him miss cases or misconstrue them. Psychology has also developed techniques for overcoming these efforts, of freeing the mind to look at information in different ways. No doubt some applied psychological research could examine how such techniques would be applied to investigations and case development so as to enhance investigators' decision making.

8. Evaluation and reward. Even if the personnel of an organization are knowledgeable and motivated to deal with white-collar crime, the evaluation and reward systems within an organization and of the organization as a totality need to support and enhance efforts against white-collar crime. The problem of evaluation has been a very difficult one in this area, both with respect to individuals and agencies, partly because the usual techniques of counting the number of investigations and cases closed as highly inappropriate. Such counting tends to ignore the extreme complexity of some investigations, the length of time needed, the resources needed, the great significance that one case might have on deterring other crimes by the perpetrators or by others; the value one case might have in educating the community of potential victims;

the amount of money and other valuables that have been lost, or might be retrieved by victims directly through restitution or indirectly through civil suits; the harm inflicted on people of moderate means, as compared to the loss to the wealthy; the significance of the case in upholding (or restoring) the faith that the public might have in the integrity of the establishment.

Some professionals have thrown up their hands at the complexity of this problem, but the need to evaluate both individuals and units has forced them to use whatever means possible to justify themselves to their sources of funds, promotions, etc. These sources are characteristically oriented toward simple statistical measures, such as number of cases cleared, etc. In order to deal with this orientation, not only are the number of ongoing and closed investigations and cases now reported, but also the dollars losses that have been suffered, the probable loss that was prevented, the number of victims, etc. In addition, narrative reports of significant cases are made. An example from the Atlanta Georgia Police Department:

The following cases were primarily the type of investigations the Unit conducted during 1979:

Case Type	Dollar Loss	Comment
Embezzlements	$ 68,585	Actual loss
Credit Card Fraud	2,300,000/yearly	5 major Atlanta banks
Employee Thefts	49,869	Probable loss
Fraudulant Employee Agencies	8,300	Probable loss
Illegal Practice/ Abortion	N/A	Investigative leads used to draft new legislation
Stock forgery	4.6 million	Invstment prevented
Insurance Fraud Ring	1 million	Estimated loss
Mail Order Schemes	Undeterminable	----------
Extortion Attempt	1,200	One case/no loss
Arson	145,000	One case/no loss
Airline Ticket Fraud	24,000/month	One case/ projected loss
Bankruptcy Fraud	753,560	Monitored case

However, no valid overall model has been developed that is widely used. Research on how to develop summary indices of the productivity of a person and/or unit would therefore be of great benefit. Such an index might be developed in collaboration with economists and sociologists who could provide ways of measuring or estimating such factors as the number of probable victims, the loss to each, the proportion that loss is of a person's total assets, etc.

Maltz (1975) proposed that in evaluating the Financial Crimes Bureau of the Illinois Attorney General's Office, an index be developed based on the components of property loss, physical injury, and psychological injury. In measuring property loss, he suggests using the number of days' pay lost by the victims; or when the state is the victim, he suggests using the amount lost to the state divided by the average income of people in the state. One possible route that such research might take is to develop a procedure whereby the weights given to the above considerations or criteria can be changed as a matter of agency or individual policy. Making such a weighting procedure systematic and known would force agencies to articulate their policies and procedures, thus facilitating open discussion of policy issues. A generally accepted index which recognized some of the issues mentioned above might also facilitate the decision process inside agencies as to whether or not to open a full investigation on the basis of the results of the preliminary one. Obviously, some estimates will have to be made about some of the variables going into the index, but if the estimates are made within the framework of the index, they would be used more validly. The results of such an evaluation of a case after preliminary investigation could be reviewed along with the index of the probability of successfully completing an investigation, mentioned in a section above. With both of these indices in mind, the manager can make a better informed decision.

One major source of input for such indices is the deterrent value of prosecutions. It has been an article of faith that the "rational" or calculating approach of the criminals makes white-collar crime more susceptable to the deterrence because of the probability and cost of being caught. However, very little research has been conducted to demonstrate the effect empirically. Hoover Institute economists have recently concluded a study showing that antitrust enforcement does lead to lower prices in an industry (Block, et al., 1978). Barlow and Layman (1976) found that 20 people convicted of white-collar crime at various times in one county in Washington did not repeat their crimes, to the knowledge of public agencies, for a period of two years after the filings of the charges. And the author with collaborators (Stotland, et al., 1980) found that increased prosecution of home repair contractors for failure to

have a license (bond) slowed the rate of increase in home repair fraud as indexed by complaints to consumer protection agencies. Not only might such studies encourage investigators and prosecutors, they also can give them the means to evaluate their productivity in terms of deterrent effects. These studies suggest possible sources of data on the occurrence of crime, and a statistical format for evaluating the deterrent value of their activities. The basic format of such studies is to develop some index of a given type of crime in a community, and record the level of this index before and during and after the initiation of a program of investigation/prosecution. By means of a regression analysis applied to time series, it is possible not only to detect significant changes in the level of the index but to account for the effects that other factors, such as changes in the local economy, might have on the level of crime. Measures of such other factors are often available. Studies of this sort, however, need to be supplemented by examination of the channels of information in a community regarding convictions, the resultant changes, if any, in potential offenders' or ongoing offenders' perception of the probability of being sanctioned and their perceived severity of sanctions. Obviously more such studies should be performed, so as to provide a much broader base of information both to justify the anti-white-collar crime effort in general (if deterrence continues to be demonstrable) and to provide a format for establishing indices of deterrence for a given case, or set of cases. Such research could provoke economists into providing more indices of the amount of white-collar crime, such as the total amount of money (after considering inflation) a community spends on automobile repairs, as compared to some standard of how much they would be expected to spend (Brintnall, personal communication). This research might also help to determine the types of perpetrators or illicit activities most susceptable to special or general deterrence.

9. Strategic intelligence. The term intelligence in law enforcement usually refers to the collection and analysis of data regarding particular persons or organizations which have been known to commit crimes. Intelligence units seek information not developed to the level required for formal investigation directed immediately toward prosecution. Since such intelligence is at least in principle one or two steps away from formal investigation, it should more accurately be called tactical intelligence. On the other hand, the term strategic intelligence should be used to refer to information and analysis which deals with the "big picture"--trends in society, in a community, which point to the probability that crimes of a certain type are likely to increase or decrease in a given area. Thus, changes in the rate of business activity could lead to changes in the ratio of certain crimes; e.g., a down turn in a local economy leading to more arson-for-profit.

The expectation that strategic intelligence can lead to predictions as to where crimes of certain types will occur in the future bears on a major problem in fighting white-collar crime: the known advantages to the criminals of the very long lag time between the perpetration of a crime and effective governmental response. Ordinarily the police function primarily in a reactive mode--investigating complaints and leads made by or supplied by other entities, individual citizens, government agencies, the attorney-general, newspapers, etc. Such a reactive mode makes the allocation of resources subject to influence by the degree of knowledge that people in these other entities have of white-collar crime activities, their ability to recognize it as criminal behavior, and their willingness to report it to the authorities. Since white-collar crimes, unlike other crimes, are often hidden and/or not recognized as such, the dependency of the police on the other entities places the police at a distinct disadvantage. It is therefore possible for white-collar crime to exist undetected for considerable periods of time and thereby to inflict considerable damage on people and institutions. Thus, more proactive strategies and tactics by government, including law enforcement, are vital.

In order to promote such proactive strategies, the possibility should be considered of establishing research teams of economic historians, systems analysts, sociologists, lawyers, to develop strategic intelligence for white-collar crimes. The organizational and procedural difficulties of establishing such multi-disciplinary teams in these areas of concern should be examined through research (see the Chapter by Dinitz). On the basis of guidelines stemming from this research, some pilot multi-disciplinary teams could work on developing models for strategic intelligence to predict where and when there will be increases in white-collar crime and the occurrence of new types. These predictive models could be developed on the basis of examination of historical data which would be used to predict the historical increases and changes in white-collar crime, although the ultimate model would be based on more current possible sources of data. The measures of past white-collar crime could be indices based on newspaper reports, indictments, etc. The models could then be tested on more current data, and hopefully would be so devised that they could be used by agencies at all levels of jurisdiction from local to national.

On the assumption that the pedictive models prove out, the possibility should be explored of establishing local, regional, and even national entities which could develop and propose the most appropriate strategy and tactics with respect to specific predicted upsurges in white-collar crime. Possible approaches could include "sunshine laws," criminal prosecutions, civil or administrative sanctions, system changes, monitoring procedures, or public education or warnings. Research could be done using available data on the effectiveness of each of these approaches

for each type of white-collar crime. The technology developed by Sherman (1978) for indexing the degree of corruption in police departments could be translated into a schema for estimates of the actual amounts of white-collar crime in an area, so that some systematic way of estimating the efficacy of various tactics could be developed. These overall strategic considerations could imply which tactical approach might be most effective to gain information about the probable locus of the crime, if any. Some types of crime might demand more emphasis on victim reports, other types might be more susceptible to proactivity confronting participants who are more likely to turn.

An example of what might be called strategic intelligence comes from Hagen (1978), although he does not use the concept of strategic intelligence. He shows how one can start from general knowledge about the economy and wind up with a very specific, completely proactive investigation that probably saved his community many thousands of dollars.

B. A Case Example: The White-Collar Intelligence Process Operationalized

1. Scenario introduction. You have been reading in the newspaper over the past three months how the national rate of inflation is continuing to abnormally rise. The prime interest rate offered by major east coast banks rose again for the third consecutive time in a three-month period. The current rate constituted a five-year high. This morning's paper indicated the major west coast lending institutions were following the lead of their east coast counterparts. . .

Ideally, the above scenario should prompt the following type of questions of the white-collar crime intelligence process:

1. What impact will the economic factors described in the newspapers have on the business community in my jurisdiction?

2. What has been the impact on the east coast business climate since the first increases in the prime interest rate started to occur?

3. What ways could a white-collar criminal gain monetarily from the described economic climate?

4. What would be indicators of such criminal activities being designed or perpetuated in my jurisdiction?

5. What would be logical information sources to review for such indicators?

Based upon your prior experience, you know that numerous increases in the prime interest rate for corporate loans over a short period of time may be indicative of a tight money market. Such raises may have little impact on your community if the business climate has been stable with minimal growth or new business start-up. However, if the growth pattern has been escalating with the upswing of inflation and many new businesses are being started, the ingredients of an "advanced-fee scam" are present.

Specific to an advanced-fee-scam, the following questions must be addressed:

1. Has there been an increase in new business starts?

2. Has there been an increase in new construction or land development activity?

3. Has there been an increase in new industrial start-up or expansion activities?

4. Has there been an increase in loan denials or reduction in existent lines of credit?

5. Has there been a decrease in solicitation of loans by private individuals or lending institutions?

If the answers to these questions are generally "yes," the advanced-fee target should be considered viable with future on the determination of the existence of concrete indicators of the crime. The mere existence of the ingredients does not justify the conclusion that the scam exists, even from an intelligence perspective. Key indicators might include:

1. Financial source activity soliciting loan business in spite of economic climate.

2. Financial source requires a finder's or processing fee in advance to cover acquisition of the loan monies and the completion of the required paperwork.

3. Financial source is not headquartered in the United States.

4. Financial source's financial statement suggests tremendous assets; often of the type that are subjectively valuated or capable of excessive inflation (foreign or domestic landholdings, mining claims, other loans, horse stables, etc.).

Hagen then shows how the use of these fear indicators lead him to focus on one brokerage house, and a very intense investigation revealed a criminal operation.

In the area of organized crime, commissions have been set up to engage in such strategic intelligence, such as the New Mexico Governor's Organized Crime Prevention Commission (Hartz 1977). Such commissions can not only indicate the areas in which resources should be directed, but also warn the public, stimulate discussion of preventative measures, etc.

Even local neighborhood groups of citizens can devise strategic intelligence processes before Congress. Scondia (1977) showed how an analysis of the deterioration of housing in an area and the increase in absentee ownership could be used to predict an increase in arson-for-profit.

C. Conclusion

This paper focused first on the processes of gaining information about the occurrence of white-collar crime, either reactively or proactively; secondly on the motivation of the police for gaining such information and using it most effectively; thirdly on the techniques for investigation; fourth on evaluation of anti-white-collar crime efforts; and finally on strategic considerations. In each instance research was suggested which could enhance the contribution of police to the overall effort to control and eradicate white-collar crime. The research projects suggested are not exhaustive, but they appear to be the most relevant to the purpose of the police role as a stable information processing agency. These projects could also be usefully conducted in non-police investigative agencies such as prosecutors' offices, regulatory agencies, inspectors-general offices, etc., since they need to be part of the total, pervasive effort that was called for in the opening paragraphs.

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VI. THE REGULATORY ROLE IN THE CONTAINMENT OF CORPORATE ILLEGALITY

John M. Thomas
State University of New York - Buffalo

A. Introduction

Regulatory agencies define and enforce legal rules in areas where government has decreed that the unhindered play of market forces can create serious liabilities for society. These rules are derived from statutes governing such diverse problems as antitrust violations, securities fraud, tax evasion, environmental pollution, worker health and safety, consumer fraud, and discrimination.[1] To the extent that an essential aspect of the regulatory process is the interpretation of vague legislative mandates, regulatory officials are able to define what constitutes illegal behavior on the parts of individuals and business organizations.[2] In addition, the exercise of discretion by regulatory officials influences the agenda of other law enforcement agencies required to prosecute offenders.

The early, seminal writings on the nature of white-collar crime recognized the importance of the regulatory process. The problem of a regulatory approach was a prominent theme in Sutherland's conception of white-collar crime. According to Edelhertz:

> He [Sutherland] forcefully pointed out that our legislation had established a unique legal structure with a complex of administrative proceedings, injunctions, and cease and desist orders to meet common law fraud if committed in a business context, thus largely preempting the field of enforcement and making criminal proceedings unlikely or seemingly inappropriate (Edelhertz, 1970, p. 4).

Later Newman noted that ". . . the vast bulk of white collar legislation is regulatory rather than penal in philosophy, is administrative in procedure, and by its qualifications is directed chiefly toward the business and professional classes of our society" (Newman, 1958). And Kadish's analysis of the use of criminal sanctions in economic regulation distinguished this area of law enforcement by the fact that ". . . the responsibility for investigation, detection, and initial prosecution is often vested in a specialized agency or other body rather than left with the usual institutions for policing

and prosecuting criminal violations" (Kadish, 1963, see also Caldwell, 1958).

The concept of economic crime committed by business organizations has become increasingly complex and bewildering as regulatory statutes and agencies continue to proliferate.[3] As a consequence, it is difficult to propose a comprehensive typology of these offenses and to generalize about the role of the regulatory function in the containment of white-collar crime. There are, however, several important dimensions of regulatory offenses which should be noted. First, these offenses encompass a wide diversity of victims: the general "public" in the case of environmental laws; individuals who are members of the violator organization in the case of worker health and safety and discrimination; and specific members of the public such as shareholders and consumers in the case of consumer fraud, antitrust violations, and drug statutes.[4] Second, it is not always clear that these offenses include the use of deception, or the explicit disguise of purpose (see Edelhertz, 1970, p. 14). Some regulatory violation may be committed in the absence of fraud, such as in the environmental and health and safety areas. This is not to say that these types of offenses could not be accompanied by other fraudulent transactions. A hypothetical example provided by Shapiro is plant X which fails to abide by EPA emissions standards vs. plant Y which fails to abide, claims compliance, and "files for tax breaks for the installation of non-existent antipollution devices" (Shapiro, 1979, p. 38). Third, regulatory problems lend themselves to what has been termed compliance, rather than sanction-oriented enforcement methods (Mileski, 1971; Hawkins, 1980). The goals of enforcement in these situations include change in an undesirable illegal condition or state of affairs. Sanctions may not be imposed immediately because it is felt that negotiation between the regulator and regulated will bring about the necessary corrective action. Sanctions are used as a threat to secure compliance and deter future violations. In this sense, regulatory offenses can be said to require conciliatory systems of legal control in contrast to penal. A conciliatory system of law refers to "remedial styles . . . assistance for people in trouble . . . what is necessary to remedy a bad situation" (Black, 1976, p. 4). Finally, although all regulatory agencies possess broad powers to investigate criminal activity and determine violations, this does not extend to criminal prosecutorial authority. At the federal level, agencies refer cases to the Department of Justice for criminal prosecution. In addition, agencies have the option to pursue a variety of other remedies--for example, civil prosecution which can result in fines, injunctions, or consent decrees.[5]

While there have been many empirical studies of the private corporation, comparatively little research has been

focused on the behavior of regulatory bureaucracies. Recently, a British scholar has noted:

> It is commonplace in the sociology of the law to observe that a characteristic of industrialized societies is the use of the criminal laws to regulate economic life. Yet it is remarkable that so few analyses of the nature of the regulatory process are to be found in the literature, especially given the fact that post-war Anglo-American sociology of law is largely a sociology of criminal justice (Hawkins, 1980, (a) p. 1).

In general, the regulatory process is concerned with how officials define and apply regulations, and the impact on compliance and deterrence of various enforcement remedies available to regulatory agencies--decisions to refer for criminal prosecution, to proceed with civil prosecution, or undertake formal administrative procedures (see Clinard, 1979; Note, Harvard Law Review, 1979.) Central to the problem of administrative discretion (see Davis, 1969) are decisions concerning the selective enforcement of violations, strategies for obtaining compliance, the use of sanctions, and the way agencies acquire information about regulatory problems (see Gifford, 1972).[6]

The purpose of this paper is to analyze the relationship between the exercise of discretion by regulatory officials and the control of corporate illegality through regulatory sanctions. The problem of discretion is important because of the problem of compliance and the traditional ambivalence about assigning blame which attaches to many of these offenses[7] (see Kadish, 1963). Part II discusses recent general trends in the regulatory control of corporate illegality involving a growing emphasis on laws designed to protect the consumer and provide for public health and safety. Part III presents a general conceptual framework for considering future research on the regulatory process. This framework focuses on two problems in the exercise of discretion: the negotiation of compliance and the choice of legal sanctions. In summary and conclusion, Part IV suggests several projects which might be included in an agenda of future research. A basic assumption of the following discussion is that systematic, empirical efforts to evaluate the impact of various regulatory sanctions, or to test new alternatives, should be informed by a greater understanding of the behavior of regulatory bureaucracies. As Jerry Mashaw has recently observed, a useful evaluation study ". . . is research that is embedded in the policy process, i.e., research responsive to the world as the administrative decision maker sees it and constrained by the policy guidelines that the bureau recognizes" (Mashaw, 1980, p. 75).

B. Trends in Government Regulation

There have been a number of significant developments over roughly the past decade and a half in the effort to control corporate illegality through the regulatory process. First, there has been an increased willingness on the part of the federal government to advocate criminal sanctions for regulatory offenses. Traditionally, criminal penalties have been ancillary to other sanctions, used as a last resort when other types of sanctions proved unworkable (see Harvard Law Review, 1979).

An example of the recent prominence given to criminal penalties is the 1975 case of U.S. vs. Park. In this case both ACME Markets, Inc., and its chief Executive Officer, J. R. Park, were found guilty of the 1938 law against storing food shipped in interstate commerce in a rodent contaminated, unsanitary building. In interpreting the FDA legislation, the Supreme Court upheld the Park conviction and argued that a corporate officer with the authority and responsibility to prevent or correct a violation of the FDA Act, and who does not do so, may be held criminally liable for the violation. Recent legislation in environmental regulation also supports this trend. The 1972 amendments to the Federal Water Pollution Control Act provide for the criminal prosecution of corporate officers for the abuse by these organizations of the environment. First offenders face imprisonment up to one year and fines of $2,500 to $25,000 per day; additional offenses can be punishable by up to $50,000 per day and a prison term of up to two years. The increased penalties for price-fixing under the Sherman Act also reflect a desire by Congress to impose greater personal criminal liability on corporate officers.

On the other hand, many regulatory agencies have limited the use of available criminal penalties. While the teeth in such remedies have been sharpened by the courts and Congress, agencies have not utilized these weapons. Edlhertz has summarized the nature of this general phenomenon as follows:

> Except in rare instances [IRS and SEC] agency enforcement officials are prone to avoid considering cases for criminal prosecution. Agents or auditors alert to criminal issues lose their goal in a climate of discouragement and delay, or in the course of administrative and civil settlement negotiation (Subcommitttee, 1978, p.8).

It can also be hypothesized that the goals of compliance and deterrence in regulatory enforcement create uncertainty about the function of criminal sanctions. Arguably, the principal objective of statutes governing "corporate crime" is "not to punish morally culpable violators but to deter undesirable

conduct regardless of culpability" (Harvard Law Review, 1979, p. 236).

In contrast, the use of civil money penalties by administrative agencies has increased; federal agencies now rely on these fines to a much greater extent than criminal referrals. And, there is some evidence that the adoption of civil penalties is associated with agency preferences for maintaining control over the process of negotiating settlements, a goal which has been reinforced by the Congressional grant of authority to federal agencies to settle money claims. Thus, it has been argued: "The differing degrees of prosecutorial control exercised by regulators is bound to influence their selection of enforcement sanctions" (Diver, 1980, p. 288).

Knowledge of the major influences on the exercise of discretion in the use of civil money penalties is important because such fines have been advocated as a more effective deterrent to regulatory offenses than criminal sanctions.[8] The impact of the civil alternative, however, can be blunted by implicit criteria employed by the regulatory bureaucracy in these decisions. Research on the assessment and collection of civil fines has revealed that proportionately less severe penalties were levied the larger the enterprise or the more serious the risk of harm (Diver, 1980, p. 291.)

Another significant trend in government regulation is the growth of what has been termed the "new social regulation" (Lilley and Miller, 1977; Bardach, 1979). In contrast to the traditional commercial regulation represented by such organizations as the ICC, SEC, FCC and CAB, a vast number of new agencies have been created in functional areas which cut across industry lines (Weidenbaum, 1978). A partial listing of this new legislation includes: the National Environmental Policy Act, 1969; the Consumer Product Safety Act, 1972; the Equal Employment Opportunity Act, 1972; and the Occupational Safety and Health Act, 1970. A prominent goal of these laws is the desirability of doing something about a specific problem, often defined as a moral imperative (see Kagan, 1978, p. 9). In part, this is a function of a political dynamic which tends to create new regulation, what Mashaw has recently termed "the ideology of governmental effficiency--the view that government is, and must be, an effective agent for getting things done" (Mashaw, 1979, pp. 44-51). The end result was a set of new definitions of illegality which symbolized the legitimacy of continued governmental regulation of matters previously left to the private sector (see Wilson, 1972, p. 166).

The problem of administrative discretion and compliance is complicated, however, because many statutes of the new social regulation reflect an objective which conflicts with the moral imperative to eliminate damage to the environment, remove unsafe

products from the market, or assure a safe and healthful work place. This goal embodies what Kagan has termed the utilitarian value in the American legal tradition, specifically the need for maintaining economic efficiency: ". . . regulators are expected to moderate police-mission enforcement whenever it comes too strongly into conflict with other important social interests and values, such as economic stability and efficiency," (Kagan, 1978, p. 10). For example, the Consumer Product Stafety Act states that the promulgation of standards shall include consideration of the public's need for the product involved, the probable impact of a regulation on the cost and availability of the products, and efforts to achieve objectives which minimize adverse effects on competition and commerce (Consumer Product Safety Act of 1972, 15 U.S.C., S 2058 c(1,) 1976). Similarly, the Toxic Substances Control Act of 1977 specifically requires the administrator of that Act to consider the economic impacts of proposed action and not to "impede unduly or create unnecessary economic barriers to technologiacal innovation" while fulfilling the "primary purpose" of the statute (Toxic Substance Control Act of 1977, 15 U.S.C.A., S 2601, 1978 Subb.), and the OSHA legislation of 1970 states that the "feasibility" of standards should be considered relevant to he attainment of the highest degree of health and safety protection for the employee. Here feasibility has been interpreted to allow the Secretary of Labor to take account of economic dislocation in enforcing OSHA regulations.[9]

In addition, recent efforts to modify the Occupational Health and Safety Act and provide for congressional checks on the powers of the FTC highlight the extent to which many of these regulatory areas have politicized distinctions between "culpable criminal acts" by corporations and the "social responsibility" of the enterprise. From one perspective, the basic objective of these statutes is "not to punish morally culpable violators but to deter undesirable conduct regardless of culpability" (Harvard Law Review, 1979, p. 1236). An extreme example of the intrusion of economic criteria into a white-collar regulatory offense is housing code enforcement. Here strict enforcement is conditioned by the spectre of property abandoned by landlords and the dislocation of tenants. There is a belief among officials that the use of sanctions will not only result in non-compliance, but encourage such developments (see Galanter, Thomas, and Pallen, 1976; Ackerman, 1971).

While the enforcement of white-collar/corporate regulatory law has been traditionally bedeviled by the supposed moral neutrality of these offenses (Kadish, 1963), this issue of blameworthiness has assumed new relevance with the emergence of "social" regulation. As Keith Hawkins has noted:

> The ambivalence surrounding regulatory deviance . . . is presumably attributable in part to the recency with which new values have been invented and proscribed, and the recognition that economic activity is responsible for the material well-being of the community . . . (Hawkins, 1980, p. 3).

The end result of legislation which accommodates both of these goals is to increase the discretion available to officials in the regulatory agency. Negotiation over the extent and timing of compliance becomes institutionalized. Enforcement is influenced by the way agency officials interpret and resolve conflicts between the moral goals in legislation and pressures for reasonableness represented in the objective of economic efficiency. It could be hypothesized, for example, that to the extent officials judge a violation as morally reprehensible, the less criteria of economic efficiency may be taken into account in the enforcement of rules.

In summary, the combination of these trends creates a dilemma for the control of corporate regulatory offenses. On the one hand, there is sentiment for deterrence through the imposition of criminal sanctions; on the other hand, the argument for the moral imperative of many of these offenses has been diluted by the view that enforcement must take into account economic exigencies.

The goal complexity of regulatory legislation also highlights the relationship between the lawmaking process and the exercise of discretion by agency officials who interpret law and apply sanctions. If the criminalization of these offenses is a policy objective, it is important to understand how the regulations influence legislation in ways which can affect the use and impact of criminal sanctions. A study which illustrates this process is Shover's analysis of the enactment of the Surface Mining Control and Reclamation Act of 1977. This research documents how the regulated industry was able to ensure that the final legislation incorporated its perspective on economic considerations and defined enforcement issues as problems to be negotiated with the regulatory agency (Shover, 1980, p. 124).

C. The Nature of the Regulatory Process

The received wisdom of traditional administrative law has been that regulatory agencies are capable of implementing clearly definable, objective goals requiring technical expertise (Freedman, 1975). Today, however, it is widely recognized that such a "rational actor" model is misplaced; the regulatory process is more properly conceived as essentially political--a balancing of the competing demands of interests affected by agency decisions. Another contemporary theme is the strong

criticism that the regulatory decision-making is systematically biased in favor of organized interests, most often the regulated firm. As a context for presenting a conceptual framework defining the principal influences on the exercise of discretion in the enforcement process, it is useful to review the reasons why this bias, real or imagined, can occur. To begin with, it is important to recognize that agencies have limited resources and are subject to severe case overloads.[10] Thus, as Richard Stewart notes: "Unremitting maintenance of an adversary posture would quickly dissipate agency resources" (Stewart, 1975, p. 1686). This can result in charges of bias because of a perceived failure to prosecute, and the view that enforcement favors quiet negotiation and settlement over the virtues of the rule of law.[11]

Second, the nature of the regulatory process is such that agencies confront firms who are what has been termed "repeat players" (see Galanter, 1974). The "repeat player" is that enterprise which has frequent encounters with the regulatory agency either as a violator or as a contestor of rules and policies. In the consumer fraud area and in certain areas of the new social regulation, such firms are often better able than the public, consumers, or victims to learn the rules of the regulatory game--the nature of agency procedures. This familiarity can result in certain advantages which contribute to the perception of agency conservativism and bias.

Finally, the goals of regulation imply that the deterrence of future violations goes hand in hand with obtaining compliance. Unlike the typical criminal violation, the use of sanctions in regulatory violations is tempered by the realization that the illegal condition may continue unabated, creating further harm to the public and victims (see Mileski, 1971). Regulatory officials are vulnerable to charges that they are overly conciliatory and compromise the law in efforts to bring violators into compliance. In contrast, it has been demonstrated that certain types of regulatory offenses--e.g., environmental pollution and occupational health and safety--require considerable flexibility and adaptability on the parts of officials if the objective of real compliance is to be achieved (see Kagan, 1980; Hawkins, 1980). How, and under what circumstances, compliance should be negotiated poses significant problems of discretion for the regulatory agency. Yet, unfortunately, our knowledge of the major influences on this process and its impact on the effectiveness of regulatory sanctions is extremely limited. We now discuss a set of concepts which might usefully guide research in this area. These are classified under two headings: the nature of enforcement policy and constraints on the exercise of discretion.

1. Policy formation: Resource allocation and regulatory priorities. Empirical research on the compliance process and the use of various regulatory sanctions should begin with the simple realization that enforcement is based upon explicit or implicit policies. In our framework, policy formation refers to what Diver has termed the "view from the top" of the regulatory agency:

> . . . the enforcement problem is one of structuring and controlling the exercise of choice: what regulated activities to examine, what indicators to monitor, what inferences to draw from observations, which suspected violations to document, whether to initiate formal enforcement proceedings, what concessions to demand or sanctions to seek. A top-down enforcement policy is a set of rules, . . . for allocating resources among, and specifying the content of, various surveillance and prosecutorial tasks (Diver, 1980, p. 261).

In analyzing the nature of the policy formation task, it is important to note that regulatory organizations face an ever-expanding agenda of issues, a problem inherent in the nature of the regulatory process. Because agencies are charged with less than precise mandates, officials frequently enlarge the domain and increase the complexity of regulation in an effort to decide what exactly the agency should accomplish (Wilson, 1972, p. 152). The current administrator of E.P.A. has recently remarked: "Only when you try to implement a statute do you find out all the complexity" (Business Week, May 26, 1980). In addition, the politics of competing demands can create situations where the agency must respond to an array of legal challenges which force a revision in priorities and resource allocation.[12] For example, the EPA was recently faced with an April 30, 1980, deadline imposed by the federal court for the issuance of rules on the handling and disposal of hazardous wastes. This was finally achieved by shifting a large number of personnel from outside the solid waste division. But apparently 56 of these had to come from the office of water planning standards which itself was falling behind another deadline to regulate toxic prohibitants in wastewater (Business Week, May 26, 1980).

The political and legal dilemma in the resource allocation task is the desirability of maintaining fairness and equity. An agency may devise a formal policy based upon a sophisticated analysis of where the deployment of resources could achieve the greatest benefits. Such a plan could establish enforcement priorities where the greatest overall reduction in a particular regulatory area of white-collar/corporate illegality would occur for a given expenditure of resources. The problem with these efficiency-driven allocations, however, is that they can lead to

inequities. A pattern might be established whereby different violators of offenses regulated by a particular agency would face different probabilities of being caught and sanctioned.[13] The design of formal policies necessarily implies a concept of fairness. If one among several violators must bear a higher burden of being caught or of disportionate costs to society, the regulatory process can create an incentive not to comply. In general, we need to know more about the way regulatory agencies reconcile conflicts between efficiency-oriented planning and legal criteria of equity.

Agencies structure priorities, either explicitly or implicitly, because they do not have the resources to perform every function delegated by legislation. A formal policy becomes a means of controlling the behavior of lower-level officals who can commit the agency to the investigation and prosecution of specific violations. Thus, an important relationship exists between the task of resource allocation and the exercise of discretion in enforcing actions against particular violators. The impact on enforcement of budgetary policies which restrict resources to certain kinds of activities has been identified by Gifford. He argues that "complaint-issuance and other decisions within the agency structure ought to utilize the budget decisions as referents." They can do this, however, "only if persons fully acquainted with the implications of the budgeting decisions are involved, either as participants in complaint-issuance and related kinds of decision-making, or participants in the review of those decisions" (Gifford, 1972, pp. 32-33). In this sense, communication patterns within an agency can be significant influences on decisions to use sanctions and negotiate compliance in specific cases.

A recent analysis of the IRS (Long, 1979) is one of the few studies of the regulatory process which has focused specifically on the relationship of resource allocation to decisions about enforcement. Hypothesizing that "important areas of discretion are exercised not by individual law enforcement officers, but by the law enforcement agency more generally in setting broader policies," this study examined the relationship of resource allocation to (1) choice of sanction--civil vs. criminal, and (2) decisions about the auditing of returns. It was found that few criminal sanctions were used and that this was positively correlated with the amount of resources allocated to criminal investigation. In addition, the relatively large allocation of resources devoted to civil investigation (audits) was related to the organizational goal of maximizing total enforcement coverage. The time and, thus, cost of criminal investigations are substantially higher than civil, thus ". . . transferrring more resources into the criminal area may produce an increase in criminal conviction, but only at the price of greatly reduced enforcement coverage" (Long, 1979, p. 11). In this case,

allocation priorities were determined by efficiency criteria which arguably bore little relationship to the goal of deterrence. The IRS study has also examined the use of a formal management policy known as the Audit Plan, which incorporates the number of audits within each income class to be carried out the next fiscal year, and allocates this responsibility among geographic regions and districts. As in the case of the choice between sanctions, this pattern of resource allocation was primarily responsive to internal, least-cost pressures. Because higher income returns are more complex and time consuming, it was found that resources were allocated to the examination of lower income returns. In addition, there was a "strong inverse relationship between corporate size and audit-intensity" (Long, 1979, p. 15).

The IRS project highlights the value of quantitative impact analyses for increasing our understanding of the role of regulatory procedures in the control of white-collar/corporate illegality. In this instance, there would appear to be little, if any, positive relationship between formal resource allocation policy and the goal of deterring major violators. Such studies need to be combined with inquiries into other factors. For example, what regulatory ideologies determine the choice of a particular policy of resource allocation? How is that policy used to evaluate the performance and control the discretion of lower-level officials? What is the relationship of efficiency objectives to the political process by which an agency obtains its budget? Do agency officals believe a resource allocation policy successfully accommodates both efficiency and fairness criteria? How do agencies adapt allocation policies to external pressures, to changes in the agency's general mandate, thus, indirectly affecting the exercise of discretion in individual cases?

2. Constraints on the exercise of regulatory discretion. Studies of "street-level bureaucrats" have revealed that enforcement priorities are frequently determined at the field level, despite efforts by management to implement formal systems of resource allocation and planning. According to Lipsky, street-level bureaucrats, who ostensibly only apply the formal law, make policy. "The policy-making roles of street-level bureaucrats are built upon two interrelated facets of their positions: relatively high degree of discretion and relative autonomy from organizational authority" (Lipsky, 1980, p. 13). Thus, recommendations which purport to enhance the capacity of regulatory agencies to control corporate illegality should reflect an understanding of the "dispositions of implementors--how field level officials exercise discretion" (D. Van Meter and C. Van Horn, 1975). The work of Lipsky and his colleagues highlights the extent to which enforcement officials develop coping mechanisms as a response to the complexity of enforcement tasks (Lipsky, 1976). Officials respond to resource complaints

by enforcing regulations according to their own assumptions about the basic causes of white-collar/corporate crime. Violators may be classified as inherently "bad," or as the victims of circumstances beyond their control, regardless of the intent and culpability which reason would attribute to a specific violation (see Lipsky, 1976; Kagan and Scholz, 1979). Our two major problems of discretion--the negotiation of compliance and choice of sanction--are directly influenced by factors which determine whether regulatory officials are legalistic in the applications of rules, or flexible--accommodating rules to specific, unique circumstances. The new areas of social regulation discussed earlier have mandated the use of professional inspectors who respond to complaints and conduct routine investigations; it is at the field level of enforcement that critical judgments about the seriousness of violations and moral culpability of violators necessarily take place (see Kagan, 1980; Hawkins, 1980).

What problems lend themselves to the legalistic, rule-oriented approach and why would agencies encourage this approach rather than flexibility in negotiating compliance? One important constraint is the legislative mandate of the agency. If the agency is not specifically required to take economic consequences into account, a legalistic approach may be easier to implement. We have argued, however, that this is not the case with much of the new social regulation which has played a major role in complicating the meaning of corporate illegality. Another important aspect of legislative mandates is the extent of regulatory power provided to the agency. In certain white-collar/corporate regulatory offenses, specific limits placed on fines and criminal penalties contribute to the norm of flexibility in negotiating compliance (see Hawkins, 1980). Other important factors include the nature of the political suppport--interest group and media pressure--surrounding regulatory problems. The presence of these can create a highly visible enforcement process, and pressure for a less accommodative, individualized application of the law less vulnerable to perceptions of unfairness and inconsistence (Kagan, 1978).[14]

In many respects, the essence of the regulatory discretion lies in the nature of the relationship between field-level officials and the regulated (see Hawkins, 1980; Mileski, 1971; Nivola, 1978; Lipsky, 1976, 1980; and Kagan, 1980). The goal of compliance means that officials will make judgments about the use of sanctions based on the need to maintain access to information, preserve on going relationships, and the cooperativeness of the regulated (Hawkins, 1980 (b); Nivola 1978). As a consequence, agency demands for strict enforcement according to the rules can have a negative impact on the goals of compliance and deterrence. If the requirement of strict enforcement comprises the official's ability to negotiate, the

ultimate effectiveness of a sanction may be lessened. Kagan's research has revealed that:

> . . . the inspector's ability to obtain information and evidence that would support the use of legal sanctions depends, at least in part, on the implied promise that the information supplied will be interpreted fairly and that those legal powers will not be employed indiscriminately and unreasonably . . . a reputation for reasonableness brings the enforcement offical more complete access and better information. More information increases his legal power, and more legal power gives him more to trade for cooperation (Kagan, 1980, p. 21).

And the lack of valid information about the nature of violations may be related to the reluctance of prosecutorial officials to impose criminal penalties for regulatory offenses (Kagan, 1980, p. 20).

An important problem in enforcement policy is the way the law is mobilized--how cases enter the regulatory process. In the case of housing code enforcement, for example, there is a strong tradition of responding to individual complaints. A major criticism of OSHA regulation has been its policy of responding to all employee-initiated complaints.[15] This reactive-proactive dimension of policy formation has important consequences for the investigation and control of white-collar/corporate illegality (see Edelhertz et al., 1977, pp. 217-219). A complaint-oriented policy is not necessarily congruent with efforts to help specific classes of victims or understand the underlying causes of problems. According to Black, an inherent limitation of reactive approaches is that, by definition, they operate on a case-by-case basis:

> Cases enter the system one by one, and they are processed one by one. This creates an intelligence gap about the relations agency and between cases. It is difficult to link patterns of illegal behavior to single or similar violators and thus to deal with the sources rather than merely the symptoms of these patterns (Black, 1973, pp. 134-135).

There is less incentive for agencies to accumulate knowledge about the underlying causes of illegality if they are dominated by reactive, complaint-oriented inputs. Conversely, the possibility of negotiating compliance and imposing legal sanctions in an individual case on the basis of objective information about recurrent patterns of illegality is enhanced by proactive systems of enforcement. In general, the principal constraints on discretion can be classified according to

regulatory task, the needs of the regulatory bureaucracy, and the nature of regulatory ideology.

a. Task. An important dimension of task has been noted previously--the extent of case overload and the necessity to adapt to conditions of resource scarcity. Officials cope with this problem by controlling the attention devoted to specific cases and by adopting views about the purpose of regulation which are congruent with resource and time constraints. An instructive case study in the consumer fraud area is Silbey's analysis of the enforcement of the Massachusetts Consumer Protection Act (Silbey, 1980). Here it was found that officials handled virtually all complaints through mediation; settlements were negotiated which provided restitution agreeable to both victim and business offender. This strategy of enforcement flexibility *in extremis* was rationalized by officials as being in the best interests of victims. But the end result of this strategy may well have had negative consequences for future compliance and deterrence as violators came to see the enforcement process as relatively costless. Silbey concludes:

> It is not justified to expect that having to make restitution once, or even often, induces purveyors of goods and services to avoid practices that give rise to complaints . . . . The effect is to satisfy the individuals involved, but to fail to protect the anonymous and future consumer. The law enforcement agency may succeed in obtaining by some standards a satisfactory result but is individualized to an extreme; it does not provide the opportunity or conditions able to remedy the situation that gave rise to the need for law enforcement in the first place (Silbey, 1980, pp. 15-16).

The goals of restitutions for victims of regulatory offenses vs. restribution against offenders vs. deterrence have been recognized as a complicated issue of jurisprudence in defining corporate illegality (see Harvard Law Review, 1979). Before deciding on any one, or a combination of these goals, however, it is important to recognize the subtle effects of the nature of the regulatory task on the way discretion is exercised: problems of case overload can interact with particular values (in this case, concern for the victim), resulting in a syndrome of compromise and settlement. And if such a pattern becomes an end in itself, real compliance and deterrence will prove increasingly problematic.

A second relevant dimension of regulatory task is the nature of the rules enforced. As Wilson states: "If compliance with a rule is highly visible, costs little, and entails no competitive disadvantage, that rule will be more easily enforced than one with opposite characteristics" (Wilson, 1972, p. 163).

In these instances, flexibility in individual cases may be dysfunctional and too costly; information about the underlying cause of violations is more readily available, and regulations are less likely to be viewed as unreasonable. The need for a high degree of flexibility in negotiating compliance and the use of sanctions is also lessened to the extent that voluntary compliance is influenced by public sensitivity to the regulatory offense.

b. Bureaucracy. The problem of discretion in negotiating compliance is further complicated by what can be termed the maintenance needs of the regulatory bureaucracy. These are of two types--political and managerial.

To the extent that an agency must concern itself with a hostile or unpredictable political environment, it will attempt to control the discretion available to officials who must apply rules to individual cases.[16] Whether or not this attempt will be successful, the end result of coping with a volatile regulatory environment can be a proliferation of rules by the concerned agency. As Wilson notes:

> The more visible the agency, the greater the demands on it, and thus the more rules it must produce to assure its security and survival. . . . Critics of regulatory agencies notice this proliferation of rules and suppose that it is the result of the "imperialistic" or expansionist instincts of bureaucratic organizations. Though there are such examples, I am struck more by the defensive, threat-avoiding, scandal-minimizing instincts of these agencies (Wilson, 1980, pp. 377-378).

An important consequence of rule proliferation may be an increase in the perceived unreasonableness of regulations and a lower probability of voluntary compliance--a situation which increases the utility of a flexible approach to the negotiation of compliance.[17] Thus, the lower-level official who must exercise discretion against violators is placed in a conflict: on the one hand, the agency will stress the uniform application of rules and risk avoidance; on the other hand, the goals of compliance and deterrence require a greater degree of flexibility and accommodation. If this condition occurs, inspectors may wind up erring in the direction of being too lenient. They will be less inclined to conduct the kind of probing investigation into the causes of a violation, and monitor progress in remedying a violation which a meaningful process of negotiated compliance requires. Diver has described a related phenomenon as follows:

> Efficient risk aversion behavior would therefore involve conducting an extensive, superficial

examination for easily detectable violations, rather than an intensive inspection for less visible offenses (Diver, 1980, p. 285).

The political maintenance needs of agencies can disrupt the relationship with the regulated which lower-level officials, such as inspectors, feel is necessary to effectively carry out their tasks. A tragic example is Shuck's analysis of meat packing inspection--a case which also complicates judgments of corruption and unethical conduct on the part of regulatory inspectors. As is the case with many types of regulation, the enforcement of packing regulations has combined an agency's tendency to overregulate (the U.S. Department of Agriculture) with an industry's propensity not to want to comply with the law. If all regulations were strictly enforced, no meat processor could remain open; hence, inspectors have had enormous discretion to decide which rules to enforce and how (Shuck, 1972). Thus, the USDA has traditionally allowed inspectors to apply regulations in a fexible manner, recognizing that reasonableness can be important for compliance. Inspectors have been generally assigned to one plant where an informal system of taking gratuities--a system know as "cumshaw"--became accepted and commonplace. Inspectors developed a clear and widely shared morality about the acceptance of gifts: a gratuity becomes a bribe, and therefore off limits, if it will lead to an abnormal enforcement of the regulations. Nevertheless, violating the norm of accepting an occasional bundle of meat, "cumshaw," was also felt by inspectors to jeopardize the on-going cooperative relationship needed for effective enforcement. As Shuck graphically notes:

> . . . much in the meat inspector's daily life--the pressures of his work routine, temptations by the packer, the job socialization process, the traditions of the industry, the conventional morality of his fellow inspectors, the general bribery statute, and the imperatives of "getting the job done". . . tells him that he may accept gratuities from the packer with a clear conscience (Shuck, 1972, p. 83).

At the same time, the USDA would adopt a rigidly legalistic position against inspectors and the gratuity system when it occasionally became public and politicized, while recognizing the importance of this system during the normal course of events. In response to the political pressure, the exercise of discretion by inspectors was redefined as corruption.

The managerial type of maintenance need reflects the constant problem of case overload. Efficiency criteria assume greater importance than ambiguous objectives, such as compliance and deterrence, which are not easily measurable. This need manifests itself in discretion which is highly legalistic, but

also directed at "closing" cases without the realistic threat of sanctions for non-compliance. Inspectors, investigators, and prosecutors respond to the need to manage case flow--the control system--rather than the unique requirements of individual cases. Cases with the greatest probability of being settled take precedence; evaluations of performance are based on measurable indicators of productivty creasing disincentives to adopt a flexible model of regulatory enforcement.[18] Agencies adopt productivity measures, such as number of violations cited, in the belief that this will inhibit officials from being too lenient. But this can create serious problems for compliance, which depends on the investigation and analysis of the underlying causes of regulatory violations (Kagan, 1980). Inspectors subject to such productivity measures will tend to overlook the less obvious, report violations that are clearly identifiable, and greatly simplify their procedures of investigation (see Diver, 1980). Because regulatory agencies have considerable difficulty assessing the impact of enforcement on regulated firms, there is a tendency to use sanctions as ends which can be measured with little concern for negotiating compliance or the goal of deterrence. Thus, as Diver notes: "The agency judges its actions by their contribution to the volume and severity of sanctions administered" (Diver, 1980, p. 277).

c. Ideology. Ideological perspectives on the motives of the regulated and the proper goals of regulation are an important influence on the exercise of discretion by officials. Kagan and Scholz, for example, have identified what they term three common "theories of non-compliance" adopted by regulatory officials: the "amoral calculator" who is motivated entirely by profit-seeking and who rationally calculates the costs and benefits of breaking the law, the "political citizen" who has principled disagreements with regulations which are considered unreasonable and arbitrary, and the "organizationally incompetent" who violates because of inadequate management procedures and failures in supervision (Kagan and Scholz, 1979). Similarly, an important variable in Hawkins' study of water pollution inspectors in England was the use made by these officials of judgments which classified violators according to moral culpability (Hawkins, 1980). In the Silbey study of the Massachusetts Consumer Fraud Bureau, discussed previously, officials believed that negotiated settlements were the best means of achieving restitution for the injured victim (Silbey, 1980).

An important source of regulatory ideology can be the values of top-level professionals in the agency. Kelman's study of OSHA reveals the strong pro-protection values of key officials trained in safety engineerig or industrial hygiene who believe that the costs of regulation should be incidental to the goal of continued risk reduction in the workplace (Kelman,

1980). This set of beliefs has exerted a strong influence on definitions of OSHA offenses and the exercise of discretion by inspectors. There is evidence that OSHA inspectors have internalized these values in the enforcement of violations: "There is a cost to infusing this sense of mission. Many American inspectors, armed with their goal of finding violations, appear to be steam-rollers." And a significant percentage of U.S. OSHA inspectors stated that they "took no account when a firm threatened to shut down because they couldn't afford to pay for changes required by the regulations" (Kelman, 1979, p. 268)

In the extreme, such an ideology is quite congruent with an excessivelly legalistic, rigid exercise of discretion by enforcement officials. OSHA, like many regulatory functions, is unable to inspect, investigate, and monitor all regulated workplaces within its jurisdiction; consequently, the legitimacy of its enforcement process is essential as a means of obtaining voluntary compliance. But legitimacy is undermined by ideologies which compromise the discretion required to negotiate compliance and employ sanctions to deter future violations. In this sense, regulatory ideologies are not inherently negative. They incorporate values which, for the most part, are translated into laudable objectives; the idology of risk reduction and the protection of worker health and safety is unexceptionable and necessary. It is when agency policy makers fail to understand the influence of ideology on enforcement decisions that these values can become disconnected from desired regulatory outcomes. Then the important values are not realized because the impact of sanctions on deterrence and voluntary compliance is undermined.

Perhaps the most critical ideological factor is the set of beliefs defining the role of sanctions in regulatory offenses. We have emphasized that many regulatory problems are compliance-oriented, requiring a flexible enforcement model where the threat of sanctions can be instrumental in remedying the problem created by an offender. Notwithstanding the importance of determining the need for flexibility according to the objective circumstances of cases, lower-ranking personnel, who must detect and investigate violations, may still <u>believe</u> compliance should be negotiated. They often place little faith in formal legal processes and the imposition of sanctions. If policy-makers are advocates of sanctions as an end in themselves for regulatory crimes, a significant ideological conflict between levels and roles in the agency can develop.

It is important to recognize the limitations of the flexible approach. It is vulnerable to the charge of inequity--the failure to treat "like cases alike." Moreover, the effectiveness of flexibility is highly dependent on the ability and motivation of officials to obtain accurate

information relevant to culpability. Another problem is that negotiation may result in failure to achieve changes in corporate policy and/or procedures which would insure future compliance with the law. Nevertheless, when blameworthiness is highly problemmatic or the violation is based upon rules which are perceived to be unreasonable and challenged, a degree of flexibility may be necessary in order to obtain compliance and deter future violations. The policy problem is two-fold: (1) what are the key dimensions of competence in the use of this type of discretion; how can we develop the flexible adaptive style; and (2) how do task bureaucracy and ideology inhibit capable field-level professionals?

C. A Research Agenda

A principal theme of this paper has been the need for more research on the exercise of discretion in controlling corporate illegality through the regulatory process: the negotiation of compliance and the use of regulatory sanctions. These issues have been the focus of the conceptual framework discussed in Part III. This concluding section argues for additional, related studies on the criteria for selecting among sanctions, the impact of administrative remedies such as the consent decree, and for further research on the issue of the "moral neutrality" of regulatory offenses.

1. <u>Regulatory sanctions</u>. An important source of discretion available to regulatory policy-makers is the choice of sanctions once prosecution has been decided as necessary for achieving the goals of compliance and deterrence. The decision-making process is complex:

> In the case of non-regulatory criminal offenses, the prosecutor is faced with the comparatively simple decision of whether or not to proceed at all. But in the regulatory context, the decision to proceed at all is complicated by the availability of valid fines, and the decision to proceed criminally is made vastly more complex and less objective by the unclear distinction between the two sorts of sanctions. Two decisions must be made: first, whether to seek any sort of sanction, and second, whether to proceed criminality or civilly (<u>Harvard Law Review</u>, 1979, p. 1307).

In addition, as stated previously, regulatory agencies have enormous lexibility to fashion remedies. These include not only criminal and civil penalties, but also administrative proceedings which can result in license revocation, or legal orders to change corporate procedures. As Shapiro notes:

> Regulatory agencies differ from traditional criminal justice agencies . . . in the diversity of prosecutorial models available to the former in the disposition of illegality (Shapiro, 1979, p. 2).

The selection of criteria governing whether to proceed criminally or civilly is, for the most part, arbitrary and we know little about how criteria are applied in particular cases. With respect to food and drug violations, an Associate Commissioner for Compliance in the FDA has stated that "several" factors are considered in choosing:

> (1) the seriousness of the violation; (2) evidence of knowledge or intent; (3) the probability of effecting future compliance by the firm in question as well as other similarly situated as a result of the present criteria; (4) the resources available to conduct investigations necessary to consummate the case successfully; and (underlying all of these) (5) the extent to which the action will benefit consumers in terms of preventing recurrence of the violation throughout the industry (Fine, 1976, p. 328).

The scope for interpreting these guidelines, and selecting from among them in a particular case, is enormous. This subjectivity also creates difficulties for judicial review and the capacity of non-governmental parties to challenge agency decisions (See Tunderman, 1980).

Regulatory statutes leave enormous latitude for judgments about the nature of violations as a basis for applying remedies. For example, the Occupational Health and Safety Act provides for fines according to judgments about the "seriousness" of the violation, and provides that a fine may be "discounted" if the violation demonstrates "good faith." And the FDA has a storehouse of responses to violations, ranging from notices that merely point out "minor violations," "regulatory letters" which order the firm to correct the violation and report back to the agency, criminal prosecution if the violator is "unresponsive," and the court-ordered products if the hazard is considered "iminent" (see Kagan and Scholz, 1979). There is broad discretion in both the interpretation of violations at the field level and in the subsequent choice of remedies by higher agency officials.

One method for studying decisions concerning violations and choice of remedies would be to examine instances where an agency adopted different enforcement procedures in essentially the same fact situations. The infamous Reserve Mining Company case (see U.S. v. Reserve Mining Co.) and EPA's suit against Allied Chemical Corp. (U.S. v. Allied Chemical Corp.) provide examples suitable for this type of approach (see Harvard Law Review,

1979). In the Reserve case, the EPA chose to pursue civil sanctions beginning with an injunction to stop the dumping of "tailings" from mining operations into Lake Superior. Later the EPA sued to force Reserve to clean community drinking water sources which had become contaminated by these "tailings." In contrast, the same agency decided to use criminal sanctions against Allied, a case which involved the discharge of the pesticide Kepone into the James River of Virginia. Here the U.S. Attorney succeeded in obtaining numerous indictments against the corporation and several employees. The agency decisions in these cases raise important issues of fairness and equity, as well as the differential impact of the two strategies on the goals of compliance and deterrence. Organizational case studies of the history of these two decisions, proceeding inductively through interviews and the examination of archives, could provide valuable insights into this aspect of the regulatory process.

A related issue has to do with the fact that many agencies must refer cases for criminal prosecution. The structure of white-collar/corporate crime is such that detection is in the hands of administrative agencies while prosecution rests with the U.S. Department of Justice (Subcommittee report, 1978, p. 8). Thus, it can be hypothesized that the informal relationships between regulatory bureaucracies and prosecutorial units are an important factor in decisions about case disposition. Several important questions come to mind in considering the interdependence of two different law enforcement bureaucracies. For example, are there conflicting expectations and signals which limit referrals? Are referrals governed more by the informal priorities of prosecutors rather than the formal policies of agencies? Comparative studies could be conducted of instances when case referrals were turned down, cases accepted, and cases where agencies decided not to refer violations for prosecution. The relevance of the agency-prosecutorial relationship has been recognized as an important factor in the effective use of greater personal liability, as in the Park case, and efforts to increase the application of criminal fines in areas such as the FDA Act and violations of Motor Carrier Safety legislations. One author has stated, for example:

> Administrative agencies have been reluctant to resort to criminal proceedings for a variety of reasons. Perhaps they fear loss of control over the litigation once it takes on the status of a criminal case. Perhaps they also sense the general reluctance of prosecutors to place prosecutions for such crimes high enough on their list of priorities to receive prompt and appropriate attention (F.M. Turkheimer, 1980, p. 24).

2. Administrative remedies -- the consent decree. Given the prominence of administrative remedies for regulatory violations, in contrast to criminal referrals or civil prosecutions, it is important that we learn more about how they are used. The consent decree, for example, is a frequent outcome of administrative action: an agreement between the agency and the violator whereby the violator agrees to no further violations without having to admit guilt. But as the Clinard study points out: "Unfortunately there is no uniformity in monitoring of consent agreements. Some agencies do monitor, some do not, while others, operating in a random fashions [sic], sometimes monitor consent decrees and at other times do not do so" (Clinard, 1979, p. 30).[19] We know virtually nothing about the process of implementating consent agreements and their impact on compliance and deterrence. The following questions should be addressed: Are some agencies more prone to adopt consent decrees, or similar remedies? What are the principal influences on the adoption of these methods--the value of regulatory task (overload, resource constraints), belief in their efficacy for compliance and deterrence, or bureaucratic imperatives such as the need to close our case problems? What exactly is the content of these agreements? How are they monitored and enforced? How analogous are consent decrees to the formal bargaining which occurs in the prosecution of nonregulatory criminal offenses?

3. The public perception of regulatory crimes: moral neutrality? Almost twenty years ago, Kadish correctly identified a critical problem in achieving deterrence with respect to white-collar/corporate regulatory offenses. He labeled this the dilemma of "moral neutrality," the fact that the use of traditional criminal penalties is not accompanied by resentment against these types of crimes (Kadish, 1963). The perspective we have presented on the nature of the regulatory process indicates that this set of attitudes can figure prominently in agency policymaking and the exercise of discretion by officials at the field level. Kadish's idea for resolution to this issue deserves systematic analysis: the cultivation of "the sentiment of moral disapproval" (Kadish, 1963). Research in this area should focus on the deterrent impact of select prosecutions and their publicity. The larger issue is the role of regulatory agencies in informing public attitudes about the costs to society of corporate offenses. Unfortunately, in many instances this responsibility has been overshadowed by the need to defend against the economic irrationality of regulatory procedures.

In conclusion, it is important to recognize that the regulatory role in white-collar/corporate illegality is a dynamic one--growing and constantly changing. In part this is because of extensive development of the doctrine of judicial review of administrative discretion over the past decade (see K.

Davis, 1977). These changes will continue to present significant opportunities for studies of the regulatory process. In particular, impacts of different remedies should be monitored and evaluated. But the design of regulatory policy should also reflect greater knowledge of the enforcement process: the influence of policymaking and of regulatory task, bureaucracy, and ideology on the critical problems of discretion.

Footnotes

1. For careful assessments of the growth of regulatory bureaucracy, see Lilly and Miller, 1977; Bardach, 1979; and Weidenbaum, 1978.

2. Regulatory agencies make extensive use of what are termed "informal administrative procedures" (See Davis, 1977). A vast number of regulatory problems are resolved by these relatively invisible processes. These include various investigations, tests, and inspections conducted in order to detect violations and insure compliance with rules and standards. In contrast, formal proceedings in administrative law include rule-making and adjudicative proceedings and are frequently governed by the provisions of the federal Administrative Procedures Act or its state equivalent. Under rule-making, agencies develop policy which is then applied in the future to all persons and institutions engaged in the regulated activity. Adjudication is somewhat akin to a trial, but applies policy to past actions, resulting in an order against, or in favor of, a named party to the proceeding. These are important dimensions of the regulatory process. But they pale in contrast to the prevalence and impact of informal procedures. A critical problem with informal procedures is the maintenance of important legal norms: for example, the fairness of inspections, and the consistency and accuracy of investigations. Field-level officials responsible for many informal procedures also attempt to maintain considerable autonomy from agency supervision. There is a need for more research on the workings of informal procedures. One respected commentator remarked several years ago, "There have been empirical studies of the accuracy or fairness of informal administrative inspections for thirty years" (Gellhorn, 1972). This observation is still accurate.

3. On the nature of economic crimes, see Ball and Friedman, 1965. These authors conclude that any assessment of the role of sanctions in economic regulation should begin by distinguishing the types of economic regulation under consideration. More recently, it has been argued that regulatory offenses ". . . show a common label by default, not by theoretical design. For those who seek to examine offenses of this kind, greater discrimination between kinds of violative behavior is necessary" (Shapiro, 1979, p. 37). This has become increasingly difficult as more and more regulatory offenses are included in the general category of economic crime.

4. The Department of Justice has recently attempted to assign priorities to classes of white-collar crime according to type of victim. See Report of the Attorney General, National Priorities for the Investigation and Prosecution of White-Collar Crime, 1980. Four of the principal categories fall into the regulatory area: "crimes against consumers, crimes against investors, crimes against employees, and crimes affecting the health and safety of the general public." In reviewing recent empirical studies of the regulatory process, this paper will focus primarily on these issues, including relevant work on the functioning of the Internal Revenue Service.

5. The SEC, for example, functions as investigator, prosecutor, and judge, through a division of authority in the agency structure. See Hazen, 1979, p. 431. In a comparative study of corporate illegality, Clinard notes: "For the most part, corporate lawbreakers are handled by administrative quasi-judicial boards of government regulatory agencies such as the FTC, the NLRC, and the Food and Drug Administration. The government regulatory agencies may impose an administrative remedy or they may ask the civil or criminal court to do so, as for example, to issue an injuction" (Clinard, 1979, p. 20).

6. According to James Q. Wilson, "Regulation on behalf of consumers creates very large problems of discretion among lower-ranking personnel, just as attempts to enforce traffic laws and vice laws create such problems for police departments. How the members of a large organization will manage that discretion depends on a number of factors, of which influence from the affected industry is only one, and may not be the most important. We know very little--indeed next to nothing--about the day-to-day management of these regulatory tasks" (Wilson, 1972, pp. 160-161).

7. A recent study of water pollution in Great Britain found that officials were generally unwilling to talk of "crime" when discussing these violations: ". . . sort of language is considered appropriate only where clearly blameworthy conduct exists--where there is a calculated breach of regulation or where the polluting substance is widely known to be danerous and there was carelessness in handling it" (Hawkins, 1980, p. 3).

8. Proposals have been made to experiment with higher civil penalties. It has been argued: "There are compelling reasons to use civil rather than criminal sanctions in order to deter illegal corporate activity. . . . The basic aim of civil sanctions is deterrence; retribution is the province of criminal law. Therefore, a basic tenet of a

system of civil fines should be to ensure that the amount of the fine is a function of deterrence" (Harvard Law Review, 1979, pp. 1369, 1370).

9. An example of the intrusion of economic criteria into a white-collar regulatory offense is housing code enforcement. Policies advocating strict enforcement are constantly tempered by the belief that this will lead to the abandonment of property by landlords, the dislocation of tenants, and an erosion of the property tax base. There is a widespread view among elected officials that the use of sanctions will result in non-compliance and encourage further economic deterioration (see Galanter, Thomas, and Palen, 1976; Ackerman, 1971).

10. This is a pervasive condition of government bureaucracies whose primary function is the servicing of cases through professionals (see Lipsky, 1980).

11. Two significant court opinions which illustrate this perspective on the regulatory process are Environmental Defense Fund Inc. v. Ruckelshaus and Moss v. CAB.

12. There are very few studies which have focused on the problem of policy formation in law enforcement agencies, the way priorities are established and resources allocated among competing commitments (see Galanter, 1972). In the regulatory area, the FTC has been the focus of both investigative probes and more academic study. There have been indictments of the agency for its failure to devote resources to the more important responsibilities of its statutory mandate (see Posner, 1969; Edelman, 1974). Although subject to criticism on methodological and theoretical grounds, the Nader group study of the FDA specifically highlighted the problem of resource allocation. This investigation concluded the agency was ineffective because it failed to go after major firms which routinely broke the law, choosing instead to pursue small violators in order to give an appearance of active regulation (Turner, 1970). More recently, policymaking processes of OSH have been subjected to careful analysis (see Kelman, 1980; Zeckhauser and Nichols, 1979).

13. Thurow has argued, for example, that there is ample evidence to suggest that large benefits are possible from the use of analytic methods of allocating resources in law enforcement. But such efficiency-oriented techniques must be based on a clear notion of equity goals (Thurow, 1970, p. 451).

14. On the other hand, regulatory agencies are also aware that political winds can shift rapidly, and for this reason, they may attempt to adhere to a general policy of flexibility. Jeffery Jowell has observed: "The tactics of the typical regulatory agency consist of the 'raised eyebrow,' subtle threats and cajolement, and selective enforcement rather than the bludgeon blow of strict enforcement according to defined rights and firm obligations" (Jowell, 1976, p. 197).

15. Recent legislative proposals to amend OSHA would require the agency to attend to only "important" complaints, a change which would clearly increase the discretion available to officials.

16. For a thorough comparative analysis of this dynamic in the FBI and the Drug Enforcement Administration, see Wilson, 1979.

17. One effect of the combination of rule proliferation and pressures on enforcement personnel to strictly enforce regulations is to increase the overall legalization of the relationship between regulated and regulator. This can, in turn, lead to delay, game-playing with the legal process, and lack of compliance. Kagan has found in studies of various types of inspection processes that: "When inspection is dominated by official checklists and inspectors stress the documentation and prosecution of rule violations, they are blinded to the novel and fundamental sources of harm that inevitably escape specific rules. . . . In many instances, companies that earlier had been cooperative have become more cautious in giving information to inspectors or discussing their problems with them. They appeal citations and fines to administrative tribunals or the courts much more often. Inspectorates, in turn, confronted with rising legal contestation and challenges to their authority, respond with enhanced mistrust and legalism" (Kagan, 1980, pp. 6-7).

18. This is a phenomenon found in studies of the application of law in non-regulatory settings (see, for example, Ross, 1980, p. 237).

19. In the area of antitrust enforcement, the value of consent decrees to the Department of Justice and the FTC has long been advocated. Still, it is recognized that they can create problems. One writer on the law of antitrust has commented: "A matter of even greater day-to-day concern is the possibility that the Department (or the FTC) may make a poor settlement simply because of the ordinary risks and pressures faced by an overburdened staff. The implication

of including or excluding a particular provision may not be fully understood or adequately appraised in the light of the industry context" (Sullivan, 1977, p. 758).

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VI. NEW APPLICATIONS OF SOCIAL SCIENCE, BUSINESS, AND LEGAL PERSPECTIVES TO ISSUES IN WHITE-COLLAR CRIME

Simon Dinitz
Ohio State University

A. Introduction

Ford Pinto. Firestone 500. Lockheed payoffs. Equity Funding. Hooker Chemical's Love Canal. A 1.8 billion dollar restraint of trade judgment against AT&T. "Reckless endangerment," product liability issues, corrupt business practices, political payoffs, multinational control and manipulation of vital resources, price fixing, political payoffs, "loss" of pounds of fissionable material, silver market manipulation, questionable banking practices, auditing "oversights," computer, welfare, Medicare and Medicaid frauds.

The Wall Street Journal, Business Week, and Fortune runneth over with descriptions, allegations, refutations, analyses, and interviews with principals, prosecutors, defense attorneys, and agency regulators. Boardroom decision making is increasingly being litigated in courtrooms and discussed in the mass media. Corporate spokesmen, public relations staffs, speakers at posh noon-day luncheons, and academics of all political persuasions are uttering thoughts which reflect the growing disenchantment and distrust of corporate business practices in today's social climate. The most important new phrase in today's lexicon on the rubber chicken circuit is social responsibility. Others include ethical conduct, moral restraint, living with regulations. Speeches and articles are variously entitled, "An Unscandalized View of Those 'Bribes' Abroad,"[1] "How I Lost Our Great Debate About Corporate Ethics,"[2] "How to Be Ethical in an Unethical World,"[3] "Too Many Executives are Going to Jail,"[4] "Corporate Social Responsibility: Coming Right With People,"[5] and "Business and Accounting: Facing the New Vigilantes."[6] As the July 2, 1979, issue of Business Week put it, "Corporate officers arouse suspicion and anti-business sentiment by trying to put a smiling face on things that are worrying them in private." The article then explains that "Telling it is what corporate leaders are doing as never before, in press interviews, on talk shows, in speeches, and in advertising."[7] But, says Business Week, in an understatement worth quoting:

> the real problem is in the credibility of the message and not its communication. . . . It is that over recent years, business appears to have lost a view of

> itself as a valid social institution--and, in the process, has yielded by default much of the public goodwill upon which social legitimacy is based. In the absence of perceived legitimacy, government regulation of the corporate sector has become the preferred choice of the public and of the politicians.[8]

The policy implications? " . . . that top executives resolve to speak unto others in public as they speak unto each other in the privacy of their boardrooms and offices."[9] The unwillingness to recognize the importance of institutional norms and social and organizational constraints--the most fundamental of sociological principles--is evident in the addresses and articles by men of substance in journals of consequence.

In preparing this paper, I did a content analysis of four years of articles and editorials on white-collar crime issues in Fortune, Business Week, and the Wall Street Journal covering the years 1976-1979 inclusive. The most interesting were the addresses in Vital Speeches of the Day, given chiefly by businessmen, an occasional high-ranking bureaucrat, and a few academics to audiences of business and professional leaders. Apart from specific subject matter articles and speeches, the rest fall into one of three broad categories reflecting the prevailing ideologies within the business-professional community. At the risk of sounding insufficiently serious, these ideal-typical perspectives will be labeled in the same fashion as popular rock bands. Thus, the three are:

1. Friedman and His Fundamentalists
2. Arkin and the Persecuted
3. The Responsibles and Ethicals

1. Friedman and His Fundamentalists. Milton Friedman, the modern apostle of classical economic thought, whose mother worked in a sweatshop as an immigrant girl in America, has little patience with anything at all, especially regulation, which diverts the attention of owners, managers, and executives from free enterprise activities. Friedman, never known for his dulcet tones, argues that executives, at all levels in the organizational structure are fiduciaries whose moral obligation is to make as much money as possible for their stockholders and owners. In seeking to maximize profits, businessmen must abide by law and "ethical custom."[10] They must, however, at all costs steer clear of viewing their mission as containing "social responsibility" commitments. To vary from this profit imperative is a form of fraud--the worst kind of wrongheadedness.

Such extremism, in defense of profit, at the implied and sometimes stated cost of the violation of "ethical custom" (everybody does it as in the quest for orders by paying off

buyers and other influentials), is hardly rare in these speeches. Like a stylized dance or drama, however, the speaker usually concludes his published remarks with a plea for self-regulation, for conformity to "prevailing ethical standards." The divinity is often invoked in support of this moralizing. So are hoary adages.[11] Every so often the speaker openly confesses to the errors of his previous ways, reminding me of the testimonials frequently encountered at such self-improvement groups as Alcoholics Anonymous.

In gathering data for this presentation, I spoke to, actually queried in some detail, at least 20 colleagues and friends in public administration, accounting, management, law, marketing, and related disciplines. Included also were mechanical and industrial engineers and two nuclear physicists. My approach was to open the dialogue with the Pinto case and ask whether the jury finding of not guilty of negligent homicide was a sound verdict. I then progressed to the Firestone 500 tire recall and the Lockheed overseas bribes. While these three cases were the central focus, the discussion almost immediately broadened to fundamental issues of crime and morality, and with the physicists and engineers, to nuclear safety and the control of technology.

On the Pinto case, no business-economics-management informant thought the Ford Motor Company and its principal parties were or should have been guilty as charged. The issue, they said, was a more technical and non-criminal matter of product liability. It should have been dealt with as a civil damage matter as, indeed, it had been dealt with before the Indiana case. As the least Friedmanesque-economist informant and member of eight boards of directors, principally banks and local heavy equipment companies, told me:

> We [you and I] have been on enough criminology and economic general examinations [for the Ph.D.] together so that you know and I know that white-collar crime [concept] is not the real thing [issue]. Ford was balancing the trade-off between redesign of the car at enormous cost versus the cost of rear end collision flame-out payments. In the collisions, the risk of fire was still small. The trade-off was small. Any other calculation [by Ford] makes no economic sense.

Well, how about the deaths involved? His answer, "With the best of equipment, car accidents kill people."

The Firestone 500 tire case was resolved much the same way. Lockheed, I was told, either did business with pay-offs as is the business ethic in Italy, Japan, the Near East, and Latin America or it did no business at all. In Friedman's terms,

neither law nor "ethical custom" was violated. Finally, this same respondent put his credo in this way: "As a member of a [corporate] board I would never violate the criminal law or permit any such actions by management. Ethical standards were more of a problem, and regulatory constraints were something else again."

Most of the other informants, though less certain, agreed that Ford was non-criminal, Firestone culpable on civil grounds, and Lockheed, well, "business is business." The law people added all sorts of convoluted arguments, as is their want, and might have gone for a criminal trial--it was always but. Surprisingly, the hard science types were less sanguine about all three key cases, perhaps because it was the faulty engineering by Ford and Firestone which was at issue. The Lockheed case, for everyone, turned on meeting the competition.

2. Arkin and the Persecuted.[12] The December 17, 1979, issue of Fortune contains a fascinating interview on business crimes by a defense attorney who specializes in defending clients charged with major economic crimes, e.g., Harold Gleason, former chairman of the defunct Franklin National Bank. Although a minority voice, at least publicly, Arkin expressed himself as follows:

> When the government charges a businessman with a crime, he starts behind the eight ball. He may face 100 years in jail for a relatively minor offense.[13]

Elsewhere, Arkin argues that (economic crime) misdeeds should certainly be punished. But, "Criminal sanctions are the harshest weapons society has for dealing with its problems. To use them indiscriminately in dealing with business crime is like taking a sledgehammer to break an egg."[14]

Asked to discuss the factors which contributed to the increased number of criminal actions, Arkin cited the civil rights movement, the attitude that there is unequal treatment of rich and poor ("the rich buy their way out of trouble"), the current economic malaise and the need for "scapegoats for inflation and for other economic worries."

Arkin was also asked by the Fortune interviewer to cite the statutes that were being so broadly interpreted as to make businessmen vulnerable to penal sanctions. Among those he mentioned were the conspiracy law ("If you even poke your finger into an endeavor that turns out to be criminal you can be charged with conspiracy"), the securities laws and the mail fraud statute ("I think in a society that is as economically complicated as ours, there's got to be room for a certain amount of puffery").

Said the interviewer, "Surely you're not arguing that patently illegal acts should be condoned?" The answer, in full:

> Certainly not. But it seems to me that there are lots of legal weapons that are more effective and more civilized than putting a guy in jail. These other remedies include injunctions, civil damages, and revoking licenses.
>
> Criminal sanctions seem especially harsh when used to enforce the growing body of "should have known" law in this country. In these cases, prosecutors are attempting to make individuals and companies liable for a crime even if they had no evil intent or guilty knowledge. In one case, the head of a warehouse chain was indicted because there were rat droppings in some food products stored in one of his warehouses. His argument was: "How can I be convicted? I didn't mean it; I didn't even know about it." The court said, "In this particular situation, you have the positive responsibility of making sure this kind of thing doesn't happen. Since it did, you're stuck." He was convicted and fined.
>
> That concept is now being imported into other areas of business. Accountants, for example, are now being indicted not because they maliciously or intentionally did something wrong or made a misstatement--which is something they should be pilloried for--but because there was an oversight, because they didn't find something they should have. And this strict accountability is transforming the criminal law from something that used to be reserved for malicious evildoing into something where carelessness in a nonvenal way becomes a cause for criminal action. What's happening, in other words, is that people are injecting into the criminal process very sophisticated and very esoteric concepts of what should and should not be done. I think they're running a grave risk of committing an injustice.[15]

Arkin and the persecuted have much more to say, of course, about the injustice inherent in multiple court indictments, the thirst of young prosecutors to keep businessmen on the end of a tether, and about the confusion of illegal behavior and ordinary business practices. The system ought to concern itself with "real" crime, with conventional depradations.

3. The Ethicals and Responsibles. The bulk of the published articles and addresses by elite figures in banking, accounting, auditing, major manufacturing, insurance,

petrochemicals, and in the professions of law and medicine hammer the theme of corporate responsibility. For some it means that business must "come right with people."[16] For others, it means being ethical in an unethical world. For a few, it is a religious imperative. For most, however, it is a matter of survival. Social responsibility will ward off further governmental intrusion, roll back hastily conceived legislation like the proposed reckless endangerment proposal, recover some of the lost public support, and insure corporate no less than societal well-being.[17] This social responsibility theme, even allowing for Arkin's concept of justifiable puffery, means coming to terms with legal, ethical and moral constraints, adding people to the equation of profit as the "bottom line," and dealing with the legitimate worries of consumer and environmental interests.

The "social responsibility" advocates are convinced that economic freedom can only be protected by rooting out actors and actions which violate moral strictures in the conduct of their businesses. One, Ivan Hill, President, American Viewpoint, Inc., in a speech to the National Leadership Conference of the American Medical Association in January, 1976, brought his listeners this good news:[18]

> Earlier this month, a good event did make the news. It was an unusual event, too, an ethical cannon shot that has been heard throughout the American business community. The board of directors of a big business corporation, America's seventh largest corporation, an oil corporation, divested itself of its chairman and two principal officers."
>
> . . . These men who were forced to resign were men of competence and highly regarded by their peers. But professional regard and personal friendship among peers, business or professional, should yield to principle-to public interest. They had to go because the majority of directors apparently believed that their continued presence would weaken the ethical, and, ultimately, the economic underpinnings of the company [Gulf Oil Corporation].[19]

The justification for applauding this seemingly draconian measure is this: ". . . when honesty and ethics sink down, centralized authority and coercive regulations rise up. The further a society moves into the areas of economic controls, the nearer it gets to people controls."[20]

How utterly at variance with Milton Friedman and his disciples is this "social responsibility" emphasis. Consider, for example, the sentiments of the President of the Equitable Life Assurance Society. ". . . Virtually nothing we do is to be

exclusively our own business. We have become quasi-public institutions because of the imperative need to consider always 'coming right with the people' in all we do." The address contains these "few earnest suggestions":[21]

1. We should make clear our awareness that business must comply with the ground rules society sets.

2. We should make clear our awareness that "generally accepted social principles" must become as controlling as "generally accepted accounting principles."

3. We should make clear our awareness that corporate social responsibility means "coming right with people."

4. We should make clear our awareness that nothing less than corporate survival is at stake.

"Decency, honesty, integrity, legality and justice are fair rules for any enterprise that wants to survive and profit through valued service to society."

The "responsibles" are unanimous in their belief that ethical, moral, and legal practices begin in the innermost sanctum and radiate by deed and example, if they spread at all. The tone, argue the responsibles, is set by the superordinates and always, as in Gabriel Tarde's theory of imitation, diffuses down.[22] In addition to competence and all other necessary business and administrative skills, a deep and abiding commitment to the highest standards of ethical conduct is a vital attribute in a chief executive officer and his staff.

Consensus, however, ends there. Speakers and authors are sharply divided over the creation of a set of ethical guidelines to govern business conduct. The pro-standards group looks upon such standards and guidelines as a good faith covenant, much like the Gideons look upon the need for a Bible in every hotel and motel room. The anti-standards group views such guidelines as either unnecessary, symbolically wrong, or simply a waste of effort. Ethics, said one, is a value system internalized early in life. Ethical conduct cannot be coerced by high sounding and toothless documents--a position reminiscent of the Etzioni distinction between organizational coercion and compliance.[23] This distinction is also often made by therapeutic community advocates who believe that treatment cannot be coerced. Said the Chairman of the Board of Union Carbide in a January 5, 1978, speech:

> I believe we [corporations] have demonstrated a willingness and capacity to respond to society's needs. I believe we can voluntarily correct the abuses of trust that in the long run are also self-defeating. And I see no reason to believe that business cannot respond to and even lead the effort to create an ethical foundation for our commercial life that will restore the position of trust and respect we need in order to serve. We must, because no one can do it for us.[24]

On this matter of company codes of ethics, the Opinion Research Corporation of Princeton questioned 650 corporations, 600 trade associations, and all 134 graduate schools of business in the U.S.[25] The findings indicated that:

- The larger the corporation the greater the likelihood that it had a written code of ethics.
- Half the codes were developed since 1975.
- Two-thirds were revised ("updated") since 1977.
- Five in six corporations thought or assumed that their employees were familiar with the substance of the code.
- Three in five codes are simply statements of general ethical principles; the others are more specific. Sanctions, in half the codes, are dismissal or possible dismissal. About a fifth of the codes contain no sanctions at all.
- Of the codes:
  - 94 percent prohibit conflict-of-interest activities.
  - 97 percent forbid giving or taking bribes.
  - 62 percent prohibit the abuse of expense accounts and special allowances.
- Most trade associations, unlike corporations, do not have written codes of ethics.
- Ironically, only 16 percent of graduate business schools offer separate courses in ethics; 98 percent claim that ethical considerations are included in the treatment of other course material.[26]

B. The Criminological Perspective

1. Sutherland and the white collars. Edwin H. Sutherland, one of the most inventive minds in criminology in this century, coined the felicitous phrase white-collar crime as the title of his presidential address to the American Sociological Association some 40 years ago.[28] In this paper, Sutherland discussed the nature and impact of white-collar crime as a violation of criminal law, of interpersonal and entrepreneurial norms and, above all, of social trust, personal virtue, and the moral imperatives. As a midwestern moralist, Sutherland coined the term white-collar criminal as a less elegant and more scholarly denunciation of the excesses of laissez faire economics than the first Roosevelt's "malefactors of great wealth," or the second Roosevelt's "economic royalists," Josephenson's "Robber Barons," Ida Tarbell's cruel oil magnets, Upton Sinclair's meat packers (Octopus), or the new rich and the new elite.[29] The concept, white-collar crime, lent criminological credence and academic respectability, to say nothing of a sociological perspective, to the study of what was after all merely the new rules of the economic game. For, despite the Sherman and Clayton Acts, the other legislative enactments prohibiting conspiratorial and monopolistic practices, gross fraud and deception, bribery and corruption, and the wholesale violations of even minimal health and safety codes, the new economic morality prescribed building empires, not character. Eventually, the great economic bust, the profound social revolution embedded in the New Deal legislation, the loss of business self-confidence, a war or two, the income tax bite, and other assorted changes on the socioeconomic-political scene soon dampened, but by no means quenched, the unbridled thirst for wealth, status, and power, however achieved.

But Sutherland's goal was not moralizing alone or even translating popular cries for economic justice into criminologic concepts. Instead, Sutherland saw in white-collar crime--concept and behavior--a vehicle for demolishing traditional perspectives about the etiology of crime and delinquency.[30] Surely it was not poverty that drove a railroad tycoon into telling his equally famous colleagues that as men he would trust them with all his material possessions, but as businessmen he wouldn't trust them to be out of his sight. It was not poor housing, family disorganization, and slum living, to say nothing of poor schools and unequal opportunity, which produced a Fisk, Gould, Morgan (if you have to ask the price, you can't afford the boat). It was not intra-psychic disabilities caused by maternal deprivation, early weaning, sibling rivalry, an unresolved Oedipus, a horrendous latency, and a cyclothymic crisis which made malefactors like Carnegie, old man Rockefeller, Stanford, and Mellon connive, conspire, and corrupt to attain their insatiable economic

goals. It is hard to believe that the great scam artist Charles Ponzi had an extra Y chromosome or that the "Robber Barons" as children were saddled with hyperkenesis, dyslexia, or aphasia, or that they had glandular malfunctions of the limbic and autonomic systems. The odds are equally great that none of these conspirators (i.e., captains of industry), had high F scores on the Adorno scale or could be differentiated, except for their success, on the projective, pencil-and-paper or performance tests which were sweeping psychology.[31] The criminal theft, looting, conspiracies, illegal rebates, bribery, corruption, and power struggles associated with our then largely unregulated economy were simply targets of opportunity and not of socioeconomic status, color, ethnicity, or deprivation. White-collar crime to Sutherland, was and is the conventional crime of those in positions of trust and wealth. As Geis has since suggested, the suite is the site of privileged crime.[32]

The demonstration that suite crime is the street crime of the business and professional communities was not, however, the ultimate concern of Sutherland. Indeed, by ridiculing the prevailing etiological conceptions of criminality as class-biased, he was, in fact, offering his genetic theory of crime causation--differential association--as the explanation of crime in boardroom and barroom, in street and suite, of native and naturalized, of winners and losers. Crime is a learned behavior. It is an outgrowth of contact with patterns of deviant conduct and intimate interaction or association with the carriers of these patterns. Thus, Sutherland found the concept of white-collar crime eminently useful in documenting and illustrating his differential association hypothesis.[33]

Under these circumstances, Sutherland was never really forced to deal with the implication of his "discovery" of white-collar crime; never forced to explore the political consequences of his work. He seemed unaware of the need for comparative work to determine whether white-collar crime would surface, in what form, and to what degree, in socialist society; in newly industrializing societies; in transactions which were personal and not simply perfunctory. It is difficult also to determine whether he saw white-collar crime as inevitable. On the control level, Sutherland called for the treatment of white-collar crime as real crime requiring penal rather than civil sanctions. But even here, he never constructed or proposed a theory of justice, of fairness, of punitiveness, of deterrence in dealing with the white-collar offender. Clearly he favored criminal over administrative law. He understood the difficulties inherent in the definition and social control by regulatory agencies over what he perceived to be an occupational variant of ordinary crime involving misrepresentation and duplicity as the chief forms of white-collar crime. In the final analysis, neither Sutherland nor most sociologists who followed in his inventive footsteps fully understood the

exquisite problems posed by the emergence of the administrative (regulatory) agency as a rule-making and rule-enforcing body.[34] Nor have the arguments over the "realness" of white-collar crime been resolved since.

Apart from the vexing issue of the definition of white-collar crime and its distinction from Edelhertz's economic crime,[35] Clinard's[36] and Ermann and Lundman's organizational deviance,[37] and Vaughan's organizational crime,[38] various critics have raised objections to the formulation itself. Not only are businessmen and executives and managers perturbed by the concept, but criminologists themselves are deeply divided on the issue of the "realness" of such violations. Professional objections are of three kinds: legal, sociological, and statistical.

On the legal front, the concept of white-collar (or economic, corporate, and organizational) crime has been battered by the contention, originally argued by Paul Tappan, that there can be no crime without criminal proceedings and a criminal conviction.[39] Since nearly all white-collar crime is treated in a civil context, it is specious to describe it as criminal. This is an attractive proposition which was especially congenial to my legal informants, no less than to the businessmen and executives whose speeches I cited earlier. The Sutherland response to this legal assault was that white-collar crime could be punished under existing criminal statutes. The issue, he argued, was convictability not conviction.[40] There is theoretically nothing to preclude criminal sanctions from being instituted against all proven tax evaders, rather than the handful who are currently prosecuted and convicted to dramatize their evil. Violations of state and federal regulatory statutes can result in criminal penalties. Indeed, said Sutherland, the problem was the differential implementation of criminal sanctions in conventional versus white-collar crime.

More serious than the legal attack on the concept was the most unkind cut of Sutherland's colleague at the University of Chicago, Ernest Burgess.[41] The latter contended that two essential ingredients were absent in white-collar crime, thereby invalidating the idea. First, the public does not react to white-collar crimes, even when it is aware of them, with the moral indignation reserved for the more conventional personal and property offenses. FTC, EPA, ICC, and NRC regulations are so complex that the linkage between victims and perpetrator is obscure. Except for the rare case--the electrical conspiracy fraud--the public is unpersuaded about the criminal nature of what are currently referred to as "ripoffs." In this context, I was impressed with recent data showing that the public's peeves are largely against personal victimizations by vendors who overcharge, overgrade, fail to make good on ambiguous warranties, and generally cheat the consumer in everyday

transactions such as car and appliance repairs. This, from the Better Business Bureau files over many, many years.[42] So Burgess is right. The public is hardly perturbed by fraudulent activities, payoffs, conspiracies, and business manipulations traditionally subsumed under the heading of white-collar crime. Moral stigma is lacking except in the eyes of criminologists--the moral extrepreneurs pushing white-collar crime as "real crime."

Second, not only is the public indifferent to these depradations, except when victimized personally, but the alleged wrongdoers are hardly suffering sleepless nights wracked by guilt and shame. To a man, and that includes the fired Gulf Oil executives who kicked in considerable sums to the Nixon re-election campaign, white-collar "malefactors" see themselves as dedicated, loyal, decent managers and executives who were, are, and will continue to be sacrificed when the ordinary and usual ways of doing business become political playthings. To my knowledge, no executive has yet "confessed" his criminal intent to do harm in violation of a criminal statute.

In rebuttal, Sutherland and others have pointed out that guilt is hardly characteristic of conventional offenders either. Either the violation, in Sykes' terminology, has been neutralized or, more recently, a conventional crime becomes a political statement for many offenders.

The third criticism of the Sutherland and subsequent formulations is the argument that white-collar crime (by multi-nationals on down to the local auto mechanic) is normative. "Everybody" does or is expected to "manipulate" for his own advantage. The distribution of violations is determined chiefly by opportunity. In this connection, the usual citation is to the work of Aubert in Norway on the responses of businessmen to rationing and price regulation.[43] There is also in this country the research of Hartung on violations in the meat industry during a time of shortage,[44] and Clinard's study of the black market in World War II.[45] The most compelling statement is that illegality is organizationally required in the world of business. "Whistleblowers" are the deviants of the organization in the same sense that the Stakhanovites (rate-busters) are the deviants of the assembly line. To the extent that business and professional organizational practices are based on some types and degrees of fraud and wrongdoing, economic crime is not an ethical, moral, or criminal fact, but a normative activity.

So, say the Sutherland disciples, is delinquency among the underprivileged which, in no way, prevents law enforcement from intervening when possible. Both Naderism and investigative reporting in the 1960s and 1970s have been influential in contesting this "normative" behavior idea and forcing some of

the 87 separate regulatory agencies and 110,000 or more persons involved in policing the private sector into more decisive action. The ongoing Congressional conflict over the role of the FTC in dealing with "normative" violations reflects the backlash effect of this more aggressive policing.

Despite these limitations, objections, and criticisms, Sutherland's pioneering ideas met with widespread acclaim among criminologists. His research findings on 70 of the 200 largest non-financial enterprises in the U.S.--980 adverse decisions, 779 involving crimes, a mean of 14 per corporation, the "habitual" criminality of two-thirds--are too well-known to require exposition. Suddenly reputable journals--lay and professional--began to raise the issue of the ethics in the marketplace and of the honorable men therein.[46] The critical point came, in my opinion, with the electrical conspiracy case in 1961 in which nearly every major corporation producing heavy generating equipment for TVA had conspired in the most ludicrous of ways--a corporate version of the Keystone Kops--to divide the market by rigging bids. The big news, however, was the jailing of the principal GE executive involved in the conspiracy--a first in U.S. annals.

2. The Edelhertz modification. Despite considerable research, both before and since the electrical conspiracy case, the ambiguities of the initial concept have made its operationalization extremely difficult. In the 40 years since Sutherland's initial paper, the definition of white-collar crime is as elusive as ever.

Certain changes, of course, have occurred. On balance, they have reduced the muckraking component and increased the possibilities of assessing the problem of white-collar crime with greater incisiveness and specificity. Most of these changes were introduced by legally trained scholars with regulatory body experience working both ends of the prosecution-defense adversary system. Short on theory, a substantial blessing, they are long on substance and procedure, on classification, and on the rules of evidence. The National District Attorneys Association project is a case in point. With economic crime units now located in D.A. offices in selected cities from coast to coast, economic crime is no longer just an academic concern. It is true, of course, that these units deal chiefly with the white-collar crimes most like conventional crimes but even that represents a step forward in utilizing the state's strongest medicine, the criminal sanction. More recent cases indicate a greater willingness to tackle the more sophisticated and difficult white-collar crimes.

One of the most influential figures in the field is Edelhertz whose NILECJ monograph reads more like a legal brief than a criminological piece. Yet this monograph operationalizes

the definition, and step by step leads us through a classificatory system and the entire network of decision points, including detection procedures, investigation techniques and problems, prosecutive evaluations, pleas and plea bargaining, sentencing, diversion, and necessary additional legislation. There are short detours to the cashless society, the impact of civil rights, election law reforms, environmental problems and consumer protection. Edelhertz's brief makes it abundantly clear why economic crimes are so difficult to prevent, deter, or even to process.

As defined by Edelhertz, an economic crime is "an illegal act or series of illegal acts committed by nonphysical means and by concealment or guile, to obtain money or property, or to obtain business or personal advantage."[48] There is nothing in this definition about occupational role requirements, respectability and high social status, or about etiology. In this sense, this legalistic conception is at once superior in being more inclusive and democratic while it lacks Sutherland's principal point--that white-collar crime is an upper-class version of street crime and is, therefore, profoundly more costly in moral and social integration terms.

Edelhertz, ever the legalist in the best sense of that increasingly derogatory term, presents a four-category classificatory system of economic crime--a term he prefers to white-collar crime. These categories are:

1. Crimes by persons operating on an individual, ad hoc basis (e.g., tax violations, credit card fraud, charity frauds, unemployment insurance, and welfare frauds).

2. Crimes committed in the course of their occupations by those operating inside business, government, or other establishments in violation of their duty or loyalty and fidelity to employer or client (e.g., computer frauds, commercial bribery, and kickbacks, "sweetheart" contracts, embezzlement, expense account padding, conflicts of interest).

3. Crimes incidental to, and in furtherance of, business operations, but not the central purpose of the business (e.g., fraud against the government, food and drug violations, check kiting, housing code violations and other forms of misrepresentation).

4. White-collar crime as a business or as the central activity (e.g., bankruptcy, land, home improvement, merchandising, insurance, pyramid, vanity, stocks and bonds, and related frauds and schemes.[49]

While subject to considerable overlap, this assortment of public bilking schemes and regulatory agency violations is a considerable improvement over the twin evils of misrepresentation and duplicity identified by Sutherland. Edelhertz finds a great many common elements in the panoply of economic crimes. Among these he identifies:

1. The intent to commit a wrongful act (mens rea), or to achieve a purpose inconsistent with law or public policy.

2. Disguise of purpose or intent.

3. Reliance by violator on ignorance or carelessness of victim. (The same proviso incidentally might be stated for conventional criminality as well.)

4. Acquiescence by victim in what he believes to be the true nature and content of the transaction.

5. Concealment of the crime by:

   a. Preventing realization of victimization.
   b. Making provision for restitution for small number of complaints.
   c. Creation of some type of dummy facade to disguise the real nature of the illegal activity.[50]

This Edelhertz bread-and-butter formulation represents an improvement over the initial approach of Sutherland. Nevertheless, it still fails to differentiate economic crimes by levels or classes. As I see it, the most manageable level, both practically and conceptually, is the consumer fraud level.[51] Here one or more operatives bilk innocent clients in such activities as various repair rackets and in behaviors comparable to petty or grand larceny. The problem can be understood and managed in conventional criminal terms relying on restitution and public stigmatization including a fine or a short sentence.

One level up and the picture begins to change. Conventional criminal law becomes inadequate and the regulatory and administrative agencies do not yet fully enter the picture. I suggest that local price fixing by chain stores, bank interest rates, "competitive" bidding for contracts in the construction industry, and similar economic practices are cases in point. Misgrading of goods, mislabeling, underweighting, and general misrepresentation, as described by Sutherland, are other illustrations.[52]

At the third level are the economic practices perpetrated by larger, usually national, organizations and bureaucracies in

the utility, railroad, airline, food, and just about every other industrial group. These practices, requiring years of litigation to resolve, are so totally unlike conventional criminality that it is a disservice to the discipline to speak to them in the same context as petty frauds and a butcher's fat thumb on a scale. National price fixing, rebates, legislative bribery (as in ABSCAM), corruption, securities frauds, conspiracies, pension and welfare fund raids, and incredible bookkeeping practices, false advertising, cost overruns, expense fraud, illegal tax shelters, expensive junkets, industrial espionage, and all the rest of the shoddy, illegal, and unethical methods of doing business are outside the criminal law and beyond the control of the cumbersome bureaucratic machinery designed to contain and control such willful, overt conduct. That the bureaucracies in other countries are even less equal to the task is small comfort to all of us who are forced unwittingly and unwillingly to pay the price. Individually and collectively we are unable to halt the erosion of our personal and social control.

The erosion of public control does not halt at water's edge. The national conglomerate, horizontal, vertical, or both, with or without computer rigging, is as a pygmy to the multi-national organizations which are the current equivalents of the feudal nation states. National controls are no match at all for the unbridled power exercised by the oil company-OPEC cartel. Apart from the lowest level defrauders, the embezzlers, the schemers, and the land promoters who defraud the public, the problem of economic crime is not a crime problem at all but rather an issue of what kind of economic society is to emerge, how it is to be organized and regulated and by whom.[53]

To reiterate, it is my contention that muckracking aside, the issue of economic crime, no matter how formulated, requires an interdisciplinary perspective now alien to criminology, to law, to economics, to psychiatry, and to other social and behavioral disciplines. The assumptions and "taken for granteds" in each discipline are inadequate to cope with phenomena which go beyond conventional legal, political, economic, and sociological boundaries.

When, years ago, I offered my first seminar in white-collar crime, the graduate students were invariably impressed with the problem and with the standard works in the field. We were unable to resolve, of course, some of the issues raised earlier concerning definition, classification, and remedies. The seminar reflected the status of the field where most of the work being produced was of the case history--isn't that terrible variety? Not a single publishable paper emerged from that first exercise. In fact, a good investigative journalist could and certainly should have been able to do as well or better. Since then, I have sponsored two major dissertations and several

theses and papers and still the same theoretical, substantive, and methodological problems persist.

So what is the problem and why can't we get on with it? I suggest the following special difficulties which preclude not only significant research but equally the management and control of these ethically dubious and legally criminal activities:[54]

1. The concept of economic, white-collar, and corporate crime is based on a nostalgic and erroneous conception of a free enterprise system in which unfettered competition is a positive good which must be preserved by law, no less than by social consensus and a congenial economic climate. Hence, our models, based on this conception, are perforce erroneous, like Becker's economic model of punishment and crime. The corporate economic structure, big labor, big Government and agribusiness operate apart from the wisdom of an Adam Smith or a John Marshall or even a Milton Friedman. Perhaps if we reversed the conception, namely, that unbridled competition is subject to civil and criminal sanction, the resulting new laws might be more enforceable. In sum, the Baptist born, midwestern bred, highly moral Sutherland confused Main Street and Wall Street in his conceptualization of the problem of economic crime. There is, of course, economic crime but our model of it must be realistic rather than sentimental if white-collar crime is to be dealt with intelligently.

2. For much the same reasons, our thinking about "malefactors" is inadequate. We apply the general principles in criminal law to them--harm, an overt act or acts, mens rea--as though responsibility can be pinpointed in massive bureaucracies like the conglomerates, the heavy manufacturing industries, and the multi-nationals. Occupational role behavior is, for most of us, a series of directives rather than a series of responsible judgments involving personal choice. Even the most powerful executives may be locked into their decisions by external considerations beyond their control.

3. Sorrowfully, even the always tenuous line between legitimate business activity and economic crime is being obliterated. To twist Erasmus about 90°, when everything is possible nothing is wrong. What is the difference, after all, between a $300,000 fund to elect one's supporters to public office and the same amount in a slush fund to raise milk prices. The more we clarify our laws to divide legitimate from illegal activity, the less noticeable becomes the difference.

The more alphabet agencies involved, the greater the confusion. Cases which take years to unravel simply do not promote criminological clarity.

4. As a consequence of the complexity of the issues and the subject, we have been forced into several uncomfortable postures: an "isn't it terrible that such a thing could happen" response to an Equity funding case, a muckraking stance which soon exhausts public patience, the study of the criminally processed violators as in tax fraud, or reliance on investigative journalism. None of these approaches is designed to generate macro-level hypotheses, to test those now extant or to provide more applicable models based on the actual operation of the marketplace at all levels. Theoretically, therefore, we have moved little since Sutherland towards an integrated theory of violations in high and low places, in and out of occupational roles, and by all kinds of offenders--from the tax evader to the well-connected Arizona or Florida land gouger; from the Ford Pinto and Firestone executives to the fraudulent local mechanic.

5. Suite crime, given these restrictions, is therefore a more or less non-researchable area in the conventional sense of research as an analytic and not merely a descriptive enterprise. The reasons, while self-evident on the whole, include some of the following:

   a. It is impossible to test hypotheses which haven't been formulated.

   b. Quantitative analysis is well-nigh impossible. The laundering of money, shredding of records, stone-walling in questioning, and an uncommonly high rate of amnesia for specific events make research a near hopeless cause. Long afterwards, when memoirs are written, the safety deposit boxes emptied, and the unshredded records recovered, it may be possible to reconstruct events as they probably transpired. But even history is hardly the answer. Only the more famous cases will surface. Most everything else will have passed from memory.

   c. Even qualitative research is difficult at best. Stories are self-serving and contradictory even when obtainable. Since malefactors do not conceive themselves as having offended, what is there to discuss? Take the Equity Funding case. The case lasted two (2) years in the courts. A

$3 billion civil suit was litigated. Two states, three major accounting firms, a considerable number of other corporations, and individuals, and 312 separate law firms, count them, contested an insurance fraud of elephantine proportions. Over 40,000 policyholders on Equity Funding's books were found to be fictitious thereby inflating the book value of the company out of all proportion to reality.

No doubt the computer fraud people, as Vaughan has shown in her dissertation on the REVCO case, continue to manipulate the tapes and even these small operatives are unreachable by the exceedingly short arm of the law.

   d. Few studies, not even one comes to mind, have ever been replicated even when such is possible as in medical, legal, and other professional spheres. Who, for example, ever repeated Quinney's piece on the retail pharmacist? Why not?

   e. Difficult as it is to obtain information from the sub-systems in the criminal justice structure, access to the proceedings of regulatory agencies are nearly as difficult to achieve as minutes of the National Security Council. Without cooperation we are left the petty stuff which resembles larceny and is processed by economic units or specialists within prosecutors' offices. To overcome this defect, a major funding center like NILECJ might fill the void by supporting a unit in this sensitive area.

   f. By the same token, but on a lower level, funding for economic crime research is almost non-existent. Picture a "crime in the suites" bill sent up to Carter or his successor--a bill to establish a research institute to study occupational crime with a view to preventing, managing, and treating the problem; upgrading personnel; speeding court procedures; developing new correctional facilities and diversion alternatives; and specifying compensation and restitution modalties. The proponents of such a measure would be candidates for the National Institute of Mental Health diagnostic facilities at Bethesda. Yet there are institutes for everything from alcohol abuse to suicidology. Why not for economic crime?

g. Most criminologists with research competency are severely restricted by their traditional training, mostly in the social sciences. Nearly all lack experience and knowledge of civil, administrative, or business law, or of such vital competencies as accounting, marketing, and commercial skills. This being the case, the only hope lies in creating an interdisciplinary team or teams which can count on long-term funding and relative freedom of inquiry in carrying out their research mission.

Still, two recent studies give cause for hope that ingenuity, scholarhsip, and persistence will clarify the problem. The first of the two, by my mentor, is a massive effort. The second, by my student, is a more limited but equally significant contribution.

Clinard's work on illegal corporate behavior involved a study of the 582 largest publicly owned corporations in the U.S.[55] He reviewed all legal actions initiated against these giants during a two-year span by 24 federal agencies--an unprecedented feat in itself. Without spelling out all the results, Clinard found:

1. Forty percent of the corporations did not have a single legal action instituted against them during the two-year period; 60 percent, however, had at least one such action.

2. There was an average of 4.8 actions against the manufacturing companies that violated the law at least once.

3. Nearly half of the violations were of moderate to serious nature.

4. There were 83 corporations (17.4 percent) with five or more violations (the "chronics" in conventional crime language); 32 or 6.7 percent were charged with five or more moderate to serious violations.

5. Most actions (more than 75 percent) were for violations in the manufacturing, environmental, and labor relations areas. The financial and trade areas yielded 5-10 percent of all violations.

6. Large corporations were more likely to be in violation than the smaller corporations.

7. Three industry groups accounted for far more than their fair share of violations--the auto, drug, and oil refining groups.

8. On the sanction level, 85 percent of all "penalties" were administrative in character. However, those violations "harming the economy" were likely to receive criminal penalties.

9. As above, large corporations were sanctioned more than smaller ones; the three most often offending industry groups were, once again, the oil, auto, and drug groups, in that order.

10. Celerity is a key in classical criminological thought along with certainty and severity. So, it should be noted, civil cases lasted four months, criminal cases about one year, and minor violations about one month.

11. As to the executives involved (and they were very few in number--56 in all the 683 corporations), over 62 percent were given probation, over 21 percent had their sentences suspended, and 28.6 percent did time.

12. These 16 executives who did time spent a total of 597 days in confinement. Two of the 16 did half of the time done by all and these two were given six months each in the same case. Of the other 14, one had a 60-day sentence, another 45, and a third 30 days. The remaining 11 of the 16 averaged nine days of confinement. Of those receiving 60 days or less, 14 of all 16 were involved in the same case--a folding carton price fixing conspiracy.

The Clinard study is a macro-level work which probes broadly but not deeply. Little, for example, is known of the dynamics of the boardroom in any of the major companies studied--both the conforming and the offending ones. It's clearly a classic in its scope, conception, utilization of sources, interdisciplinary character-involving lawyers, sociologists, and journalists. It proves that more data are available than are ever mined by criminologists who are concerned with economic crime. By the way, this is precisely the point made by a professor of accounting in his interview with me (a self-described maverick in his profession because he accepts the criminological definition of economic crime as a serious matter). He believed that criminological writing reflected ignorance of important source materials and frequently faulty interpretation of those that were unearthed. Parenthetically, he opposed the Pinto criminal prosecution as the wrong way to achieve corporate responsibility.

So much for the herculean effort by my teacher (Clinard). The work of my student, Diane Vaughan, is yet another route to the interdisciplinary study of corporate violations.[56] In this case, she teamed with lawyers, a journalist who wrote the initial story, and a fiscal analyst to get at the anatomy of a computer fraud.

The case involved the double billing of the Ohio Department of Public Welfare by REVCO, one of the four largest drug discount chains in the U.S. In one of the most improbable sequences yet recorded, beginning with the report of a podiatrist prescribing "unusual" medication for a patient, and a call from a REVCO vice-president to the Ohio State Medical Board to investigate the validity of the podiatrist's prescriptions, the case took a weird series of turns and resulted in a major computer fraud prosecution of REVCO. The case ended with the resignation of two highly placed (and respected) executives and a negotiated plea by REVCO. REVCO pleaded no contest to 10 counts of falsification, and was fined $5,000 per count. In addition, REVCO made restitution of $521,521.12 to the Ohio Department of Public Welfare. The two executives pleaded no contest to two counts of falsification and agreed to pay $2,000 each to the state. No other sanctions were imposed. REVCO stock suffered a limited downturn for a short period of time.[57] Stock trading was halted on July 7 and resumed shortly thereafter. REVCO continued to do as well or better as its three major competitors despite the fraud and the attendant publicity.

There are several elements to his case which beg exposition:

1. The modus operandi. The Ohio Department of Welfare was in arrears and was questioning the claims submitted by REVCO for prescription drugs under the Medicaid program. For reasons unknown and certainly unstated, the company (under the direction of the Vice-President who originally called the Ohio Medical Board to investigate the potentially offending podiatrist) hired six clerks to change case numbers, (e.g., 504675, Valium 10 mg., 50 tabs, $6.83 to 504657 Valum 10 mg., 50 tabs, $6.83). The date of this prescripton was altered from October 2, 1975, to October 4, 1975, and the claim resubmitted.[58] In this way, the company rapidly recovered its $521,521.12--without challenge. By accident, a clerk at the Department of Welfare discovered the double billing.

2. The response. Before the case was resolved, the Board of Pharmacy, the Department of Welfare, the Ohio State Patrol, and the Economic Crime Unit of the Franklin County Prosecutor's Office devised a first-of-its kind

network to investigate and eventually prosecute. In a movie script thriller action which any critic would pan as unrealistic, a coordinated raid was staged around the state to determine from the confiscated records whether there was a conspiracy to alter the case numbers or whether this was merely an aberration in one retail outlet. The former was found and documented. The altered records were found statewide.

3. Getting inside the company. Vaughan made every effort to contact the executives who were fired. One of their attorneys, a former law professor and colleague of mine, and, indeed, a friend, was not only adamant in his refusal but insulting in his comments about this "academic exercise." Even less was achieved with corporate management. Repeated entreaties for interviews, for getting REVCO's side of the story, were stonewalled. The company attorney, at first sympathetic to the point of even talking to Vaughan, was apparently instructed to stonewall the project to death. Even the executive secretaries to the President and lesser corporate figures reflected their disdain for the research and researcher. At one point, Diane complained to me that the secretaries were laughing and mocking her in her attempt to penetrate the corporate cocoon. It was sympathetic mockery, she added, with about the same level of conviction that one evidences on a dark deserted street in a high crime area as footsteps close. I have since learned, from a colleague in Pharmacy with whom I have often discussed the REVCO case, that one of the phantom executives, the one who is the computer expert, is now in a position of trust in a major hardware-software house servicing the pharmaceutical trade in this region.

So much for the few joys and considerable travail of being on the research frontier--in economic crime research, everything is the frontier; there is no support system. The subjects are not in uniform and they have no physical stigmata or black hats. Would that they did.

Thus, in the 40 years since Sutherland there are more agencies, more regulations, better data, increased interest, and more sophisticated analytic tools at the macro-level (Clinard). On the micro-level, the task of ferreting out criminal violations in suites is as punishing as ever. Nevertheless, even the Vaughan study proved extraordinarily fruitful. This is reflected in the first of my recommendations for future interdisciplinary research.

C. Recommendations

1. It is increasingly clear that no one agency, FTC, ICC, SEC, EPA, or any of the 80 others, is capable of coping with economic violations of economic giants whose umbrella shelters many smaller and product-independent subsidiaries. It is even the case that a simple REVCO computer fraud scheme would fall in the interstices between agencies. In this instance no one state agency--welfare, highway patrol, Board of Pharmacy, and Prosecutor's Office--could muster the skills which could be drawn together from the various agencies. Under current organizational imperatives (protect your turf, add people not functions, maintain boundaries), the emergence of effective networks is about as probable as getting water to run uphill. In the REVCO case, the network emerged incidentally and accidentally. The routinization of such "emergences" is a researchable and noble goal. Research should be directed at formulating techniques to encourage network formation as a first priority.

2. Economic crime is no longer to be viewed as the ripoff by large and powerful entities of small, powerless, and inconsequential consumer-user-victims like the elderly or the auto repair client or the new furnace/bad roof frauds. In the REVCO case, and in the more significant electrical conspiracy case, the crime(s) were perpetrated by the private sector against sector agents. After all, TVA which lost an estimated two billion dollars is hardly the equivalent of a little old lady in tennis shoes. So far, no one has looked at the implications of private (high status) on public (usually lower status) organizational crimes. I can visualize a much needed study or series of specific studies on "the routine management of the military" by private vendors or of capital improvement projects by architects, engineers, and construction firms.

3. New areas of opportunity are daily spawned by changing social needs and emerging technology. Witness computer fraud and industrial piracy, the unbelievable developments in medical technology and especially in the super lucrative ethical drug business, in vendor fraud involving nursing homes and medical and dental care. Criminologists of all descriptions--legal, clinical, law enforcement, sociological--are reactive. I believe that it is possible to simulate, anticipate, and respond to potentially explosive targets of new opportunity by the equivalent in conventional crime of target hardening. Vendor fraud is not new; its diffusion into the health area should have come as no surprise at a time when third-party payments have become commonplace.

4. "Thought experiments" are badly needed in pushing forward a theory of fraud. Fraud is rarely perpetrated on intimates. A basic requirement is "depersonalizing" the victim,

whether individual, private, or public organizations including, in embezzelment, one's own organization. American culture thrives on creating norms and developing a consensus to justify them. At the same time, we create normative evasions, to avoid the very proscriptons we prescribed. If one cheats at school, on one's spouse, in preparing tax returns, and in other traditional ways, why not on behalf of the organization or from it, or both? What, in short, is the boundary between normative evasions (socially sanctioned), and fraudulent practices (legally condemned)? Do the boundaries shift? How? Under what conditions? In short, I propose the study of fraud, at all levels, as a normative evasion rather than a specifically criminal act. Criminal sanctions are thought harsh and unworkable by nearly everyone connected with the problem of white-collar crime.

5. The "whistleblower" as a deviant. What kind of people blow their futures, risk exposure (at trial at the very least), black-listing, and personal ostracism by exposing white-collar crimes. Is "Deep Throat" a personality attribute(s), a form of getting even, or a religious and moral posture? Or all of these and more? I suggest a study of the Personal and Social Attributes of "Deep Throat": A Study of a Highly Moral Deviant Type.

6. Most managers, entrepreneurs, and ordinary persons probably avoid involvement in white-collar (fraud) crimes as much as they avoid shoplifting or other forms of larceny. Who engages in economic crimes and who does not or does so only under the most unusual conditions? I suggest a study of good (clean) and bad (fraud-prone) merchants, executives, owners, managers, and suitemen at the highest levels. The Better Business Bureau might be a fine takeoff point in identifying the cohort of vulnerables.

7. Lastly, a cross-cultural study of specific types of economic crime is greatly needed. I wrote one paper on this subject with Gideon Fishman comparing Israeli and U.S. problems, but it was non-specific by category of violation and quite tentative.[59] Most everything we do or think is culture bound. My impression is that the differences in definition, public attitudes, and social consequences are very dissimilar in Italy as against almost pathologically moral Norway. On the diamond exchanges in Amsterdam and New York. In the boardrooms on Silicon Row and in the cartel suites in Tokyo.

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VII. THE INTERRELATIONSHIPS AMONG REMEDIES FOR WHITE-COLLAR CRIMINAL BEHAVIOR

Edwin H. Stier
New Jersey Division of Criminal Justice

A. Introduction

"White-collar crime" covers a broad spectrum of illegitimate conduct directed against or arising out of legitimate governmental or commercial activity and consequently falls within the purview of a variety of public and private institutions charged with the responsibility for its containment. For example, bank fraud is the concern of such institutions as law enforcement, banking regulatory agencies, and the banking industry itself. Each such institution has available to it remedies through which it controls illegitimate behavior. Therefore, any single species of white-collar crime may be subject to control by numerous institutions employing a wide variety of remedies. Theoretically, at least, the enforcement mechanisms within these institutions collectively form a comprehensive and effective system of white-collar crime control. In reality, however, maximization of present potential has not fully materialized and efforts to control economic crime have thus far been relatively unsuccessful.

The reasons for this failure are manifold. In the first place, the diverse nature of white-collar crime works against conceptual consistency in approach. White-collar crimes range in complexity from relatively simple check forgery to highly intricate and imaginative computer frauds, involving abuse of sophisticated and newly developed technologies. White-collar crime is equally diverse in its victimization patterns. Local, state, and federal government programs are often the targets of fraud, as are shareholders, consumers, and businesses, both large and small. The nature of the offender will vary as well. White-collar criminals can be found in every socio-economic group. Offenders range from bank tellers to corporate presidents, from individuals acting alone to large corporations engaged in monolithic conspiracies to restrain free competition. Likewise, motivations differ depending upon whether the crime is perpetrated for personal advantage or in furtherance of organizational goals. These variations in form suggest no easy or general solution.

Equally problematic is the covert nature of white-collar crime which makes it particularly difficult to detect, investigate, and prosecute. Except insofar as denominated "criminal," this type of unlawful behavior is often

indistinguishable from the regular commercial and economic transactions of a business or government entity. Indeed, apart from the regulatory or statutory proscription, conduct may closely resemble sharp but tolerable business practice.

This pretense of respectability created by the appearance of normal business transactions explains yet another problem in this area, that is, the ambivalence and moral confusion in the societal response to white-collar crime. Easy moral labels that are readily applied to traditional criminal conduct do not, for the most part, acceptably characterize the various forms of white-collar crime, especially those in which the victim need not be confronted or even identified or where the losses are widely diffused over a large segment of society. Because of the plethora of laws, rules, and regulations relating to businesses' every activity, there has developed a fine line between what is illegal, legal but unethical, and legitimate business behavior.

Due in part to this dilemma and other motivational conflicts, there have emerged gross variations in perspective, priorities, and approach among the system's member institutions once the illicit conduct has been identified. Each institution responsible for white-collar crime containment has responded to the problem individually and independently of the others. The result has been rather dramatic differences in enforcement policies and utilization of existing sanctions. This unevenness in approach, no doubt, reinforces moral confusion. More significantly, however, it suggests an inability to develop societal mechanism(s) to control white-collar crime which have the support of the community as a whole.

This paper will address problems of fragmentation in the employment of white-collar crime remedies. Its thesis is that no major white-collar crime problem can be successfully dealt with absent consistent policies among the institutions which surround the problem. In preparing this paper, we have read and considered some of the very extensive academic literature in the field. Although highly informative, we have found the insight gained from our own experience to be of added value. Accordingly, our focus is pragmatic and tailored in ways which should be noted at the outset.

We do not treat all types of white-collar crime in this paper. Set aside is that class of behavior characterized by the individual fraud operator victimizing other individuals and operating independently, without any corporate or government ties. The flim-flam artist, for example, whose conduct does not usually involve the semblance of legitimate business activity actually straddles the fence between the white-collar crime and conventional criminal activity. In this type of case, law enforcement functions in its traditional role of responding to victim complaints. We also do not address problems of the

magnitude of multi-national corporate conspiracy involving multiple victims and offenders, as envisioned by the allegation of a possible criminal price manipulation by the oil industry. Because of jurisdictional concerns, the highly complex set of inter- and intra-corporate relationships and variables of international proportions, the problem may very well be outside the realm of control by state and federal authorities. For present purposes, attention will be focused on those illegal activities directed at, or committed by or within business, government, industry or the professions, accomplished by breach of trust, fraud or manipulation of the regular activities of these private or public institutions.

In structuring our response we have avoided proposals for massive organizational overhaul or sweeping legislative reform. Rather, any reappraisal of approach must first look to the existing framework of control, which we believe to be adequate, and consider means to best implement resources and measures already available.

B. Existing Remedies and Their Use

The criminal sanction is perhaps the most obvious and widely employed remedy in the struggle against white-collar crime.

Conventional criminal sanctions against individuals include incarceration and monetary fines, employed primarily for their potential to deter others from similar criminal conduct. In addition, there are a host of compensatory and other remedial measures which can be imposed ancillary to successful criminal prosecutions, usually as a condition of probation. A defendant may be required to make restitution both to the victims whose complaints initiated the prosecution and to all other parties he may have defrauded as well. Where the victim is not specifically identifiable and the impact of the economic crime befalls the public at large, reparation may also take the form of community service obligations in lieu of prison.

In New Jersey, corporations are also subject to criminal sanctions which may include heavy fines, probation, and a wide variety of other forms of punishment. The consequences of a criminal conviction may be as slight as a term of probation which requires notification of the criminal conviction to the stockholders or to the public in general, and the employment of "supervisors" for key tasks who would be responsible for future compliance with the law. At the other extreme, the Attorney General is empowered, subsequent to a criminal conviction, to institute appropriate ancillary proceedings to dissolve a corporation, forfeit its charter, revoke any franchises held by it, or revoke the certificate authorizing the corporation to conduct business in the state. Upon indictment, a corporation

can be disqualified from bidding on government contracts, conducting business with public entities, or partaking of other forms of government benefits. Moreover, corporate officers, directors, or managers either individually or collectively responsible for antitrust, consumer protection, or public bidding violations may suffer removal from office and debarment from participation in the affairs of any business conducted in the state.

Recent efforts to develop interrelated civil and criminal causes of action are found in RICO legislation. The underlying theory of RICO is that civil and criminal liability will arise out of a criminal business enterprise or a legitimate business taken over or supported by financial resources which are derived from criminal activity. In addition to providing criminal sanctions such as fines, imprisonment, and criminal forfeiture of the defendant's interest in the enterprise, violations of the Act may result in civil orders of divestment, prohibitions against business activities, and orders of dissolution or reorganization. Additionally, victims may sue to recover treble damages.

In addition to the broad range of sanctions that may be imposed in conjunction with the criminal remedy, there are a host of civil remedies available that may be employed to combat white-collar criminal activity. State consumer protection statutes, antitrust laws, and other forms of public interest legislation often provide for remedies that are more far reaching, more easily employed, and perhaps more effective than the criminal remedy in dealing with some types of economic crime. This is particularly true in those cases where the criminal remedy allows for punishment of the offender but can not provide for adequate compensation to society in general, or to the aggrieved individual in particular. The scope of civil remedies, however, is not so limited. Under existing consumer protection legislation, civil actions for recoupment of losses may be enforced either privately or publicly. To overcome difficulties inherent in the class action suit or other private modes of redress, state Attorneys General, under common law or statutory authority, may sue for repayment on behalf of individual citizen-consumers. In New Jersey, the Attorney General has taken advantage of this broad power. In one particularly significant case the New Jersey Attorney General instituted a proceeding against a seller of packages of "educational" material for engaging in deceptive practices and misrepresentations. In addition to civil penalties and other relief, the Attorney General sought restoration and remedial orders for all persons who were induced to execute purchase contracts with the defendant. The New Jersey Supreme Court upheld recovery not only on behalf of specifically named buyers who testified at trial but also for all others similarly

situated. Such a class-oriented remedy is clearly preferable to the processing of a myriad of individual complaints.

Recently, courts have granted extraordinary relief which permits continuing law enforcement scrutiny of the conduct of a defendant's business activities. In a New Jersey antitrust case brought against nine major milk wholesalers, in addition to the traditional injunctive relief and monetary damages, the final judgment contained several innovative provisions. Each defendant is required to submit certifications to the New Jersey Division of Criminal Justice containing detailed reports regarding the basis of internal management decisions pertaining to all aspects of bidding activity. The judgment permits immediate access to all books and records and requires the availability of all employees for purposes of interview by the Division of Criminal Justice. The defendants must submit any additional reports under oath required from time to time by the Division of Criminal Justice. All officers and employees of each defendant must receive personal notification of the terms of the judgment and each defendant corporation must prepare with the approval of the Division of Criminal Justice a memorandum detailing the manner in which it will assure compliance with the terms of the judgment. Additionally, each customer of the defendants must receive a summary of the terms of the judgment written in laymen's language and approved by the Division of Criminal Justice.

Through the exercise of equity jurisdiction, civil courts are also able to supplement and compensate for the limitations inherent in criminal and legal remedies which often prove tragically inadequate to deal with ongoing activity which does not cease with an arrest or the filing of a complaint. Conspiracies which continue to cause damage long after the initial conspiratorial agreement had been detected and investigated exploit the slow pace of most civil and criminal proceedings. Fortunately, equitable and timely relief against these unlawful business practices is available.

In many states, an Attorney General acting under a grant of either common law or statutory power may seek and obtain temporary restraining orders and preliminary injunctions in order to immediately halt illegal practices. In cases involving official corruption, equitable remedies may also include the constructive trust and bill of accounting. Usually invoked ancillary to a criminal prosecution or removal proceedings, these types of relief are designed to ensure recovery of ill-gotten gains from public officials acquired through a proven abuse of public office.

To the extent that economic criminal activity often encompasses conduct that is violative of various regulatory schemes, the administrative remedy also becomes potentially

significant. Administrative agencies created as repositories of specialized knowledge to regulate certain types of commercial activity are often particularly well suited to pursue remedies which may effectively control certain species of white-collar crime. They may be in an excellent position to develop information that may be essential to the successful employment of criminal and civil remedies as well. They almost always set standards for licensing and often require regular reporting to the agency by the regulated individual or corporation.

Regulatory power may also be used to restructure and supervise the future activities of a business entity found to have engaged in illegal activity. Consent orders binding management to take certain prospective and remedial courses of action provide another effective means of control. Such agreements may require the institution of internal corporate procedures and controls, the appointment of special receivers or masters to make public disclosure, and reports of corporate transactions or the restructuring of boards of directors or executive committees. License revocation can be a very effective deterrent to regulatory abuse which rises to the level of white-collar crime as can aggressive inspection and investigation of businesses that seem to generate a large volume of complaints.

Finally, extra legal remedies may exist in the activities of professional licensing boards, ethics committees, and in the internal mechanisms of various businesses and corporations. These private and quasi-public bodies are often in the best position to first detect white-collar criminal behavior and therefore possess the ability to proceed with haste and mitigate further damages. Revocation of business or occupational licenses through licensing boards, suspension from active professional practice pending review by an ethics panel and corporate self-policing through periodic spot checks, internal audits and tighter enforcement of business ethics codes all have the inherent potential to effectively deter illicit economic activity.

C. The Inadequacy of the Present Approach

When one considers the broad scope of the remedies that are presently available and being used to some extent today, it becomes readily apparent that together they can form the basis of a rather effective system for the control of white-collar crime in nearly all of its forms. Unfortunately, the remedies have rarely, if ever, been intelligently employed as part of an overall system of white-collar crime control and herein lies the weakness.

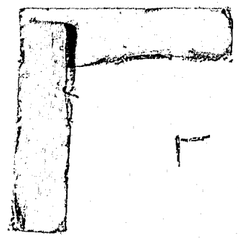
There has been a tendency for the agencies involved in this process to pursue almost exclusively the few remedies that are

most convenient and most in conformity with their perception of their own limited roles in the struggle against white-collar crime. Little thought is given to the overall problem and little emphasis is placed on the rational and intelligent selection of remedies that are most likely to accomplish the broader desired results.

Unfortunately no one remedy can be effectively employed against the broad range of criminal conduct in question, and no group of remedies can be haphazardly pursued by independently operating agencies with any degree of success. For example, although the criminal remedy is perceived by most to afford the most formidable deterrent to unlawful conduct, it clearly does not appear adequate to deal with every variety of white-collar crime. In the first place, law enforcement agencies are ill-equipped and poorly positioned to detect white-collar crime. The normal channels of information usually relied upon by law enforcement to detect other criminal activity are peculiarly ineffective in the detection of white-collar criminal activity. The nature of the unlawful conduct is such that the immediate victim or witness reporting is the exception rather than the rule. White-collar crime is generally perpetrated by concealment or deception, and is often camouflaged in the legitimate course of business. Cooperative witnesses to such behavior are generally few, and the victims themselves are often unaware of the crimes that have occurred or fail to report out of a sense of guilt or embarrassment.

Frequently, criminal justice agencies are dependent for information upon private industry or regulatory agencies which, for a variety of reasons, are quite selective and conservative in their reporting of white-collar criminal activity. Even those white-collar offenses which are eventually reported are often well insulated legally or practically from prosecution due to their complexity and to the time lapse between their occurrence and detection.

Added to this are the problems relating to the investigation of white-collar crimes. Virtually concealed in a fabric of complex commercial transactions, crimes such as antitrust conspiracies, stock manipulations, and banking and insurance frauds can take years to unravel. Very often it is necessary to review and evaluate extensive amounts of financial data in order to merely confirm that criminal activity has in fact occurred. This may prove quite difficult given the fact that very few criminal law enforcement agencies possess the investigative expertise that may be necessary to complete the investigation of criminal cases referred to them by regulatory agencies. Even those agencies that possess the investigative expertise rarely have sufficient resources to undertake more than one complex investigation at a time. Moreover, one large case will sometimes require that resources be diverted from



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2 OF 3

other assignments for long periods of time. Often, an investigation will endure long past the tenure of the personnel who are responsible for the case.

Once the illegal conduct is successfully investigated, the complex nature of white-collar offenses leads to some rather substantial difficulties in the criminal prosecution as well. A prosecution may involve scores of witnesses and reams of documentary evidence, in order to substantiate the commission of a crime and to prove the guilt of the defendent beyond a reasonable doubt. Just as fraudulent schemes often take years to complete, the process of detection, investigation, and subsequent trial may take equally as long. Assuming for the moment a successful result and the imposition of a harsh criminal sanction, one must still doubt the potential deterrence of a process so protracted in its application. Of course, neither a successful result nor the imposition of a harsh criminal sanction are to be assumed in the trial of a white-collar criminal. The difficulties in conclusively proving complex facts and mental states in accordance with rules of evidence and a criminal procedure from a far more simple era are often impossible to overcome. And, finally, when these difficulties are somehow overcome, the sanction imposed may reflect a predisposition toward leniency in sentencing white-collar criminals.

Among the most plausible explanations for this discord is the moral confusion which attaches to the societal response to white-collar crime. The moral labels so readily applied to those convicted of violent crimes seem, somehow, not to fit this category of statutory violations. The differences between the criminal and the non-criminal become clouded when illegal activity is, on the surface, at least, indistinguishable from routine, everyday legitimate behavior.

The subtle shadings between legal and illicit conduct are no more obscure than in the investigation of corruption in government. If a government contract is awarded for personal services to a loyal political supporter who otherwise qualifies, no violation occurs. Even if the intent is to reward past financial contributions or to encourage future support, the conduct is acceptable as a part of the spoils system essential to partisan politics. However, if the contract is awarded as quid pro quo for a political contribution, a crime has occurred notwithstanding the fact that relationships between the expectations of the parties have changed almost imperceptibly. It is hardly any wonder that a jury may be reluctant to convict on the basis of conduct which appears to be so indistinguishable from commonly accepted practice.

Even when criminal sanctions are employed, and convictions are obtained, the sentence may not be deemed commensurate with

the crime or even with the effort of prosecuting in the first place. This only increases the tendency to inconsistently apply criminal remedies to white-collar offenses. Both leniency and disparity in sentencing continue to erode the effect of the criminal sanction.

Perhaps even to a greater degree, civil, administrative, and private remedies also contain significant shortcomings when individually relied upon. When utilized as independent enforcement mechanisms, these processes may not be able to reach all those whose actions warrant sanction, and among those they do reach, the weight of the available sanctions may be insufficient to deal with certain categories of violations. Clearly, these processes lack criminal law enforcement machinery to facilitate detection. Civil and administrative investigations are hampered by certain limitations which do not burden the criminal process. The inability to compel the attendance of out-of-state witnesses or to employ criminal investigative techniques under appropriate circumstances severely frustrates the administrative agency's effort at information gathering and analysis. In addition to these handicaps, administrative bodies, particularly those charged with administering government assistance programs, often lack the expertise, orientation, and resources that are needed to establish their own internal controls and to identify where the program may be vulnerable to fraud and corruption.

In those instances where regulatory, civil, or private systems are unable to deter the proscribed activity, the reenforcement of the criminal penalty's deterrent effect may be required. Although problems with the deterrent effect of the criminal sanction upon white-collar crime have been noted, it is still no doubt true that its threat may be important in generating compliance on the part of prospective offenders. In this sense, the potential for criminal penalties may serve as a means to ensure the functioning of the purely administrative process.

All this is to suggest that no single enforcement mechanism, be it criminal, civil, administrative, or private, has wholesale application to white-collar offenses or is able in itself to provide an effective response. Although this interdependence of criminal, civil, administrative, and private remedies would appear to be obvious, the practice does not so reflect. While the present mix of institutions sharing responsibility for white-collar crime control is considerable, their efforts thus far remain isolated and disorganized. The result is that the present response to white-collar crime is directed only toward those specific remedies that are individually available to the various institutions operating independently of one another. Each institution tends to define the problem from its own limited perspective and to develop its

own course of action on an ad hoc basis. Such efforts foster an enforcement environment characterized by a patchwork application of remedies and resources, which emphasize the weaknesses inherent in each, rather than a combined application, designed to capitalize on their collective strength.

Obviously, it would be rather simple at this point to merely state that this lack of coordination among the involved agencies is the major reason for the ineffectiveness of white-collar remedies and to conclude that all that needs to be done is to foster greater cooperation among these institutions. Such an approach, however, would be overly simplistic in that it would fail to give ample consideration to the deep-seated differences among these institutions in philosophy and approach.

The fact of the matter is that even now criminal justice and regulatory agencies as well as private industry do not operate totally isolated from one another. However, just as individual utilization of existing remedies and resources is ineffective, current efforts to coordinate their use among institutions have also fallen prey to shortcomings which seriously undermine their joint effectiveness. In order to truly change this situation, it is necessary to fully understand those obstacles which presently hinder efforts to effectively combine the most appropriate available remedies and resources to deal with a particular white-collar crime problem.

To begin with, the basis for any coordinated effort between criminal justice agencies, regulatory bodies, and private industry must rest upon the free exchange of information among these institutions with regard to matters of mutual concern. This exchange of information is of even greater importance when one considers the relative absence of prompt victim reporting in white-collar crime offenses. Certainly similar knowledge regarding the nature and scope of white-collar crime activity by all involved institutions is vital if optimal use is going to be made of existing remedies and resources. Unfortunately, this open and free exchange of information does not appear to be the reality in existing efforts to combat the type of criminal activity in question.

Treatment of the problem of illegal hazardous waste disposal in New Jersey is demonstrative of this point. In 1977, there were 15,000 manufacturers who were producing toxic chemical waste in New Jersey. Of this total, 1.2 billion gallons were liquid chemical waste and 350,000 tons consisted of toxic sludge. The United States Environmental Protection Agency has estimated that perhaps as much as 90 percent of this toxic material was not disposed of in a legitimate or environmentally sound manner.

Despite the magnitude of this problem and its rather obvious criminal overtones, neither industry officials nor those responsible for regulating the industry reported the possible widespread criminality to the State Division of Criminal Justice. Indeed, the Division of Criminal Justice only became involved in the investigation of this activity through information received from a municipal fire department. As a result of its investigation, the Division of Criminal Justice discovered incidents of chemicals being dumped into landfill sites and other locations illegally and indiscriminately. These activities were taking place in one of the most densely populated areas of the country and in an area where the potential for pollution of ground water is extremely high. When the State Department of Environmental Protection (DEP) was advised of the preliminary findings of Criminal Justice's investigation, there emerged a very serious difference in perception of the problem between the regulators and the criminal law enforcement community. The DEP explained that the problem was one of temporary duration, caused by the closing of the state's largest chemical landfill site which until 1975 accepted toxic chemical waste. When it was closed by order of DEP, it was thought that the recycling industry, that is, that part of the industry which has developed the technology to legitimately dispose of toxic chemical waste by breaking it down, incinerating it, etc., was too young to provide a total outlet for all the generators. As a result, a black market of illegal haulers developed. These haulers ostensibly would receive chemical wastes and deliver them to a proper disposal site, but in fact, had no such site and were dumping the chemicals illegally.

The DEP was attempting to solve the problem by encouraging the development of the disposal industry. This was primarily accomplished by establishing liberal licensing and inspection standards, thereby giving new recycling companies opportunities to set themselves up in business. The Division of Criminal Justice was asked to focus its resources on illegal haulers to reduce competition from that source. It was thought that once licensed facilities began to develop the capacity to deal with the tremendous volume of chemicals being generated, the problems would be relieved. The Division accepted this analysis and so began independently investigating only the illegal haulers.

During the course of its investigation of the transporters of toxic waste, questions were raised as to the DEP's appraisal of the situation. The Division of Criminal Justice surveillances uncovered several licensed waste disposal facilities which instead of properly disposing of waste materials were systematically and illegally disposing of them. This added a whole new dimension to the problem. In addition to the increased complexity of investigating the recycling level of the industry, the support and protection afforded to licensed

companies by the agency charged with their regulation undermined the impact of criminal law enforcement as a mechanism for controlling behavior. DEP viewed the Division's efforts as an intrusion into an area in which DEP by reason of its regulatory responsibilities and technical resources had primary authority to establish enforcement policy. As disagreement regarding factual perceptions continued, distrust and personal antagonism deepened the dispute until developing an objective, consistent understanding of conditions in the toxic waste industry became secondary to a bureaucratic power struggle.

In analyzing the difficulties that are illustrated by the example of toxic waste disposal in New Jersey, it is clear that part of the problem was caused by conflicting institutional motivations, priorities, and goals. These factors led to development of a factual perception consistent with the policies which each institution had predetermined for itself.

There were, of course, other factors which created further strains on the relationship between the regulatory and law enforcement agencies which must also be recognized. Part of the problem can be quite easily explained as parochial or jurisdictional pride within each institution. Additionally each agency was apprehensive of having its internal policies shaped by others.

The regulatory agency, having decided that the ultimate solution to the toxic waste problem was the rapid development of the recycling industry, tended to overlook signs that the industry was becoming corrupt. The Division of Criminal Justice, on the other hand, which had no responsibility to find a solution to the toxic waste problem but which measured its success in terms of criminal prosecution, suspected that the industry as a whole was dishonest and should not be trusted.

In general, a perception on the part of regulatory agencies that criminal justice institutions will be inflexible in their insistence upon prosecution whenever they become involved, notwithstanding that overriding policy consideration, suggests other remedies will increase the former's reluctance to share information. This failure to share information renders coordinated action impossible, and governmental units are thus compelled to rely on the limited resources and remedies to which each has access.

Also to be considered in the context of problems in coordination and information exchange are the roles of business, private industry, and government programs. In many cases evidence of white-collar criminal activity will first be apparent to those actually engaged in the business or program in which the illegal activity occurs. Therefore, a crucial link in the passage of information to a law enforcement agency is the

business or program closest to the criminal conduct. Here again, apart from those who are simply acting to conceal their own illegal activity, diverse institutional goals often militate against an open sharing of information.

Private industry, for the most part, being profit-oriented, may only be interested in eliminating the cause of lost profits and it may be perfectly satisfied with financial recoupment or the termination of an employee deemed responsible. A company may decide against involving regulatory or law enforcement agencies in white-collar crime matters out of concern for adverse publicity. Private enterprise may also be reluctant to expose company executives to civil liability. Industry decision makers, heir to at least the same moral ambivalence described earlier, may view economic crime as a technical violation of law, but not as an offense for which someone should be punished. Even in cases where private industry might be inclined to pursue formal remedies, its perception of the potential delays and procedural difficulties involved in such a process might very well dissuade it from doing so. It may feel that the time consumed, the accompanying drain on managerial resources, and the sanctions most likely to be invoked, even if the process were successful, make cooperation with enforcement agencies simply not worth the effort.

Government program agencies have other traditions and goals which may affect their willingness to engage cooperatively with enforcement agencies in dealing with white-collar criminal activity. The law enforcement agency is primarily involved in ferreting out fraud and criminal conduct, and is ordinarily interested simply in whether an illegal act has occurred. The program agency, by contrast, is generally concerned with providing prompt assistance either directly to the ultimate recipient (as in welfare relief), or channeling it through a provider (as in Medicaid funding). Given this disposition, the good faith of the recipient or provider is likely to be assumed by the program agency. In this setting, program administrators will generally accept certain levels of fraud as inevitable. The tendency to overlook problems increases as an agency becomes more deeply involved in the development and operation of projects which it funds along with private individuals and businesses. Personal relationships between agency personnel and regulated entities are established and the agency tends to measure its own success or failure in terms of the success of its projects. In New Jersey an agency created to provide mortgage money for the construction of low and middle income housing was discovered after 10 years of operation to have been victimized by flagrant fraud schemes committed by individuals who had developed intimate working relationships with many agency personnel. Those relationships, although not necessarily corrupt, made it impossible for the agency to recognize and respond to indicia of fraud even though adequate auditing and

inspection procedures were in place. The response of the program agency when confronted with the fraud was defensive and it was reluctant to cooperate with the investigating agency.

Even when there is a free exchange of information between agencies, disagreement may nevertheless surface as a result of incompatible standards by which those facts are interpreted. In weighing and interpreting facts, the entire range of interests, goals, and motives of the institution come into play most heavily. Again, the toxic waste example is instructive. The basic judgment upon which an institution's decision to invoke its remedies must rest is whether institutional values have been offended by the conduct under review. Put another way, if the DEP remains convinced that a recycling company is sincerely attempting to reach the agency's goal of legitimate toxic waste disposal, present violations may be tolerated. It is the perception of the character of the recycling company not simply the objective facts which will influence the DEP's enforcement attitude. The Division of Criminal Justice, however, is influenced less by the long-term view of the potential role of the subject of investigation in the industry and more by its present behavior.

At the point where factual disagreement has been resolved and institutional perceptions have been reconciled, there still remains a final impediment to coordination. The ultimate selection of an enforcement strategy will be influenced by a variety of factors ranging from bureaucratic self-interest to competing social policy. The most obvious form of self-interest is public credit for enforcement activity. Strong pressure can be generated within an agency to overlook a remedy available to another agency which will receive the public recognition for having attacked the problem. More difficult, however, are situations in which genuine public interest considerations are difficult to balance. There is no obvious answer to whether a covert investigation of ongoing illegal toxic waste disposal should give way to immediate administrative action to prevent further contamination of the environment.

What appears clear is that at every step in the enforcement and regulatory process, problems unique to white-collar crime and the institutions attempting to address them have resulted in an uneven and inconsistent containment effort. Any proposal to upgrade the response to this problem, which does not take these conditions into account, will continue to be of only limited effectiveness. A mechanism must be found to narrow differences in factual awareness, factual interpretation, and policy objectives among institutions involved in white-collar crime control. In so doing we will begin to attack such problems on the basis of clearly defined and generally accepted moral values, to identify illicit conduct at the earliest possible moment, and maximize the effectiveness of our remedies.

D. Development of a Strategy for the Employment of White-Collar Crime Remedies

The ideal system of white-collar crime control calls for institutional agreement regarding the free flow of information between responsible agencies, creation of joint priorities, and the rational employment of the most effective combination of available remedies. There is no way to achieve this goal, however, absent a certain degree of self-sacrifice and inconvenience to each participating institution and a means of setting goals which cuts across institutional boundaries.

As already noted, there presently exists an impressive array of resources and sanctions within the system. Although not utilized to their fullest potential when operating individually and in isolation, the prospect of their combined and collective deployment is encouraging. For instance, opening up channels of communication between the regulating agency uniquely positioned to detect offensive behavior initially and the agency empowered to prosecute criminal violations will fill extant information gaps and avoid the overlap and duplication of effort inherent in a multi-jurisdictional system. Not only is time and energy conserved when counter-productive simultaneous investigations into the same behavior are harmonized, but the quality of the overall investigative effort, and hence the prospect of detection and application of the appropriate sanction, is greatly enhanced. The necessary specialization and expert knowledge of the regulating entity may very well be supplemented by the criminal justice agency in analyzing intelligence data and conducting background investigations or screening of employees. In this manner, the various institutional actors may function to limit their own vulnerabilities and vastly improve the overall investigative effort.

Coordination of resources and information will also provide a mechanism by which to identify patterns of fraud as well as operational and policy issues which must be resolved. Most sophisticated fraud schemes are designed to defeat the auditing techniques employed by regulatory agencies and public accounting firms. Intensive law enforcement investigation will generally penetrate such a scheme, but requires a heavy concentration of resources. Therefore, the problem for law enforcement becomes one of selectivity based upon a projected likelihood of success and a sense of priority. Non-law enforcement public and private institutions, however, possess the factual information and experience to identify high priority matters where there exists an adequate factual threshold for intensive investigation.

Collective decision-making and evaluation as to how a particular white-collar crime problem can best be handled allow for the most efficient and effective allocation of resources

among the already overburdened institutions. They also insure against cases falling into jurisdictional cracks. For instance, efforts to isolate and prioritize the most serious and visible white-collar criminals for selective prosecution will greatly relieve a criminal justice system already ill-equipped to handle its ever-increasing case load. It may be determined for a variety of reasons that other cases can be handled more effectively through the prophylactic actions of a non-criminal remedy. Still others may deserve mutual interest and accordingly will be treated on a joint basis.

Furthermore, close cooperation serves to effect a more forceful and imaginative sanctioning policy. With such a broad range of remedies available to combat white-collar crime, reliance can be placed upon a combination of sanctions selectively calculated to limit its spread. For example, the civil and criminal enforcement sections of a state Attorney General's office can work together to present a unified solution to a particular problem. Certain situations, such as those involving violations of consumer protection or environmental statutes, may call for the civil branch to initiate an action for the purpose of obtaining a restraining order and injunction and subsequently for the criminal enforcement agency to seek an indictment after the unlawful practices have been stopped. Here, the system operates at its optimal level of effectiveness by combining both the additional deterrence that penalties of incarceration provide and the emergent and remedial relief that equity secures. In other instances, remedies in addition to the criminal sanction which flow from conviction by operation of law may be concurrently invoked to attain maximum deterrent effect. An example is the interdict provision of an antitrust statute whereby a person convicted of violating the criminal portion of the act is barred from conducting any business thereafter in the state. Where non-criminal sanctions are not self-executing, other enforcement mechanisms may be actively implemented and exploited. Ethics committees and administrative licensing boards, upon notification of a criminal conviction, have the ability to eliminate the violator from the marketplace, a potentially more serious threat to the business or professional violator than all but the most severe sanctions imposed by the criminal process.

The formula for achieving this type of coordinated and cooperative activity and the benefits which flow therefrom will vary with the nature of the particular problem presented. It is readily apparent that the dissimilarity of situations presented by white-collar crime generally militates against an across-the-board consistency in approach. Any broad-based strategy for its containment must necessarily take into account the wide range of offenses and institutional relationships implicit in this variety of criminal and enforcement activity. Where a business may in some instances be the victim, in others

the violator, and where a government official may on one day be the regulator, and on another the target of an investigation, permanent relationships for white-collar crime control are hard to maintain.

Economic forces which give rise to illicit conduct should also influence the appropriate type of institutional response. Illustrative is the situation that prevailed until recently in New Jersey's alcoholic beverage industry. By virtue of a rigid system of control imposed by the Alcoholic Beverage Control Commission, liquor wholesalers could only sell their products to retailers pursuant to fixed prices. The purpose of this regulatory scheme was to reduce price competition, maintain artificially high prices, and thereby discourage alcohol consumption. The practice which developed, however, was quite different. Because the system of regulation would not allow for open-price competition, market conditions resulted in widespread illegal activity within the industry. Wholesalers desirous of obtaining business from the large retail concerns covertly competed among themselves by offering kickbacks of a portion of the purchase price to those concerns. Periodically these practices were exposed and heavy fines imposed, yet they continued. The solution was to relax regulatory control which no longer served a useful public policy and thereby relieve the pressures on the industry to engage in this type of illegal activity. Once deregulation occurred, competition which had previously taken an illicit form was transformed into legitimate economic behavior.

The variety of institutional actors charged with the responsibility for white-collar crime control further compounds the analysis. Government administrative agencies, alone, run the gamut from completely regulatory to competitive with private business. Differences in the internal dynamics of these entities should influence the nature of the relationship which can be maintained with other agencies. For example, law enforcement authorities should strive for close, personal contact with those administrative agencies that are solely regulatory in nature or those providing either direct or indirect assistance to the ultimate beneficiary. Such contacts break down institutional competition. On the other hand, it may be advisable for law enforcement agencies to establish a more distant relationship with government agencies which are involved in the development of funding applications, opting instead to maintain direct contact with agency supervisory boards and oversight committees. Such a policy recognizes that an agency of the latter type will be subject to overriding self interest in the success of its projects which will inevitably disrupt any close dealings with law enforcement.

Another way to analyze the impediments to full cooperation between institutions is in terms of whether they derive from

differences in the perception of facts; divergent interpretations of and standards applied to the facts once mutually understood; or disagreement as to the appropriate sanction for commonly characterized behavior. Where the first variety of problem is found, it is essential to establish information networks to assure a full and shared collection of data and facts. This can be accomplished in large part through regular meetings among specially designated agency representatives during which time information is exchanged and measures are taken to exhaust all possible avenues of fact gathering. Arrangements can be made, for instance, to share computer time and resources for the analysis of data. In addition, valuable input can be routinely provided by the appropriate administrative agency through its compliance reporting function, by the criminal justice authority through its network of informants and intelligence practices, and by the private sector through annual corporate internal audits and industry-wide investigative and education programs.

Once such a data collection system has been established, techniques for identifying and investigating suspect activities can be analyzed and implemented. In certain situations, the agency primarily responsible for ferreting out and dealing with a white-collar offense can draw upon the collective experience and expertise of other institutions to augment its traditional law enforcement activities. Where this may not be possible, active recruitment of trained auditors, accountants, and other specialized personnel will be necessary. In cases of mutual responsibility, multi-agency investigatory teams staffed by qualified technical and investigative personnel can be formed. In most instances involving complex and voluminous documentary evidence, the success of the investigatory effort entails coordinated and effective teamwork, even if only in the form of increased back-up and support activities.

Where the impediment to cooperation arises from inconsistent interpretation of facts by the institutions involved, the problem must be attacked by mutually defining goals and standards by which factual information is analyzed and judged. The means by which this end is achieved are necessarily intangible. As in those cases plagued by differences in fact perception, problems arising out of factual analysis require close and direct interagency relationships; only here, there must be higher-level contact among the concerned institutions. Regular and frequent consultation and communication can be maintained through creation of a formal committee under the guidance of a high-level executive and comprised of senior-level representatives from appropriate government agencies as well as the business sector. This committee would be responsible for identifying patterns of fraud, corruption, waste, and other forms of system abuse, enunciating clear policy and operational guidelines and shaping priorities.

The solution to the problem arising out of New Jersey's toxic waste enforcement efforts presents a prototype of such a cooperative endeavor. The New Jersey Inter-Agency Hazardous Waste Task Force was created after exhaustive individual efforts proved futile. The Task Force is composed of representatives from the civil and criminal justice divisions in the State Attorney General's Office, the United States Attorney's Office, the State Department of Environmental Protection, and the United States Environmental Protection Agency (EPA). Other agencies, such as the New Jersey State Police, which provides air surveillance and disaster expertise, and the Office of the Medical Examiner, which analyzes samples of chemical wastes, are also involved. Its stated objectives are the free exchange of information among the agencies involved, the joint setting of priorities, and the selection of appropriate remedies to deal with the problems as defined by the Task Force.

Each of the units that comprise the Task Force function and interrelate through a series of operating procedures established by the Task Force. Since the Task Force representatives realized that communication was the key to a successful program where multiple units are geographically separated with different functions and operating under a variety of statutes, regulations, and administrative procedures, it also became apparent that a regular monthly meeting was needed where responsible members of each unit would have an opportunity to present an overview of the investigations being conducted by their units and the anticipated results. At this monthly meeting, the Task Force identifies problem areas for intensified concern of its investigative personnel. A determination is then made as to the proper remedy to pursue, whether it be administrative, civil or criminal. Additionally, the Task Force is responsible for identifying procedural problems within the regulatory agencies which are highlighted by its investigations.

This monthly forum serves as a means of reducing the probability of duplicative efforts or interference among the member groups. It also provides an opportunity for one agency to transfer an investigation or case pending prosecution to some other agency that is in a better position to obtain the desired results. For example, if it is determined that the evidence cannot be used for a criminal proceeding due to legal infirmities, or if a critical environmental problem requires immediate action, then the case may be referred by the Division of Criminal Justice to the Department of Environmental Protection and the Division of Law for the appropriate civil or administrative action.

In the case of an environmental disaster such as Chemical Control Corporation in Elizabeth, New Jersey, where the DEP was attempting to remove 60,000 drums of hazardous chemical waste illegally stored at the site, the Divisions of Law and Criminal

Justice were pursuing violations of state laws and federal agencies, such as Alcohol, Tobacco, and Firearms, and the Federal Bureau of Investigation were pursuing federal violations along with the United States Attorney. It was only because of the established lines of communication that serious interference among these investigations was averted.

The process of consensus-building, however, entails a certain accommodation to the needs and interests of participating institutions, a realistic recognition of their relative strengths and deficiencies, and an adjustment of traditional roles. In dealing with a regulatory agency, the criminal justice agency may have to relax its opposition to including outside agencies in its investigations and consider permitting administrative action to begin before its criminal case is concluded. Likewise, the administrative agency must recognize the needs of law enforcement in entering a case early, develop a rewards system for agency personnel to encourage cooperation with criminal law enforcement, and recognize the experience of criminal investigators as a primary resource in developing internal program controls. Government agencies must recognize the disincentives in private institutions to cooperate with government and work toward overcoming them. Such simple measures as consciously avoiding inconveniencing employees of a business during an investigation will in the long run tend to break down the barriers to cooperation between enforcement agencies and the private sector.

All involved institutions should be made to feel integrally responsible for a broad social program of substantive control, regardless of the respective roles each may play in any given instance. Simply put, credit for success must be shared. Regulatory agency personnel who tediously comb through business records, financial statements, and similar documentation for evidence of unlawful economic activity should be considered full-fledged members of the prosecutorial team which ultimately secures the conviction. Likewise, the use of private sanctions by corporations, business, and professional associations should be encouraged and publicized by law enforcement authorities as a necessary component in a larger network of social control.

Basically, the approach just outlined also applies where disagreement focuses on the balancing of fundamental social policies among institutions rather than differences in the perception or interpretation of facts. Practically speaking, however, there can be no effective resolution of such basic difference without the active intervention of the highest level of decision-making. Such sensitive and crucial issues require bypassing department operational levels and dealing directly with the ultimate policy makers. Thus, the forum for the airing of these differences could take the form of a gubernatorially appointed advisory commission, council, or other cooperative

structure comprised of the heads of all concerned institutions or their high-level designees. Representing diverse public and private interests, this body can provide an organizational arrangement that will expedite the coordination of agencies and groups that have previously acted independently and often at cross-purposes in the formulation and carrying out of sanctioning policy. By drawing from the collective knowledge and experience of its membership, such an advisory committee would be in a unique position to provide meaningful guidance as well as specific recommendations to the Governor, Attorney General, or Legislature.

An example of such an endeavor is provided by the New Jersey Governor's Arson Task Force. Preliminary study of New Jersey's arson problem revealed a wide variety of institutions, each becoming more active in arson control from its own limited perspective. Police, fire officials, prosecutors, banking institutions, insurance companies, and numerous regulatory agencies were all beginning to formulate more aggressive anti-arson policies independent of one another. Analysis of these efforts reflected that they were often duplicative and sometimes even in conflict. Attempts to resolve these differences in approach were futile because the various institutions were rigidly pursuing policies consistent with their own limited charters.

Finally, a task force consisting of high-level representatives from these institutions and agencies was created for the purpose of rectifying the situation and the results were extremely positive. The conflicting policies that had been formulated were easily identified by the group and within a short time were integrated into a uniform statewide strategy for arson prevention and control. The process of blending the unavoidable pursuit of alternative arson remedies into one statewide strategy was so well received that plans to institutionalize the Arson Task Force are now underway.

In another instance, as part of the solution to New Jersey's toxic waste disposal problem, the Governor created the Hazardous Waste Advisory Commission consisting of leaders in industry, academia, environment, and government. This high-level committee has been charged with the responsibility to recommend long-term solutions which take into account the technological complexity and economic risks inherent in the waste disposal industry as well as the environmental concerns and control mechanisms required to prevent the corruption which presently exists in that industry.

Although the restructuring of institutional relationships described above requires additional energy and commitment, there are growing indications that the time is right for such efforts. In the first place, public awareness of both the

pervasiveness and damaging effect of white-collar crime appears to be building. As a result of the inflationary pressures of the seventies, the fiscal troubles of government, and the rapid depletion of essential energy resources, there is a growing realization of the economic impact of white-collar crime. Higher levels of education and sophistication in society explain the presence today of a consumer movement more vocal in its demands, determined in its expectations and persistent in its objectives than ever before.

Aggressive investigative reporting by the communications media also has contributed immeasurably to the public perception of the problem. Recent exposures in the news of such crimes as environmental pollution and frauds by nursing home administrators emphasize the seriousness of the resultant social and physical harm. In New Jersey, for instance, the news media waged a large-scale campaign targeting the toxic waste disposal industry. By stressing the hazardous consequences of rampant illegal and indiscriminate dumping of toxic chemicals in the state, this series of articles was responsible for stimulating governmental concern that agencies operating independent of one another were ineffective and spurred the development of cooperative governmental action.

The strength of the public's concern has spawned calls upon civil and criminal enforcement agencies as well as the courts for prompt and vigorous enforcement of the laws governing economic activity and more stringent punishment for white-collar offenders. Legislators have responded by enacting statutes extending criminal accountability to the corporate entity on the basis of strict liability and to individual officers on the theory of vicarious liability for the negligent acts or omissions by subordinate employees. These events, in turn, will hopefully facilitate private executive consciousness-raising as to the public considerations implicated by corporate policies. Indeed, private businesses have already responded by augmenting internal security forces, mounting investigative and educational programs designed to ferret out and control fraud within the corporation, and initiating complaint-handling mechanisms to deal with consumer grievances. Increased societal pressure will assure that these measures will continue and that additional ones are undertaken.

However, we remain convinced that concerted effort is the key to any major future success in white-collar crime containment. Strategic planning must take place immediately to fully exploit present public interest and support. We must carefully evaluate our alternatives. For example, RICO statutes may be counter-productive if they broaden law enforcement remedies and thereby discourage interagency cooperation. With such planning, much can be accomplished in the immediate future without massive new resources and complex legislative reforms.

VIII. ON A RESEARCH AND ACTION AGENDA IN REGARD TO WHITE-COLLAR CRIME

Gilbert Geis
University of California at Irvine

The fundamental focus of this two-day colloquium has been on the generation of information and ideas regarding suitable strategies for further work on the subject of white-collar crime. The papers that were presented offered a number of ideas about one or another kind of approach that was deemed apt to be fruitful. Generally, their authors concentrated on a segment of the problem and detailed methods by which that portion might better be addressed; they pinpointed gaps that exist in our knowledge and told how such gaps might be filled. My assignment, as I understand it, is to attempt to step back a bit and to try to coordinate and to extend the bounds of the papers, as well as to build upon elements of the free-wheeling discussions that took place after each of the presentations.

Unlike persons concerned with more traditional forms of crime, scholars and practitioners working on the problems of white-collar crime happily avoid at least one matter of moral perturbation: they do not need to deal with accusations that their work is but a thin camouflage of an unappetizing effort to keep the deprived in their downtrodden condition, or that it is part of a racist scheme to define as mere burglars and muggers persons who truly are political offenders. There was complete agreement--and perhaps this itself ought to arouse suspicion--that white-collar crime is bad, even evil, and that those seeking to understand and to combat it are enrolled in a worthy cause.

This, indeed, may be the best that can be said of our mutual undertaking during the colloquium. The subject matter itself, as the speakers consistently attested, is inordinately complex, its roots beyond altogether clear comprehension, its definition in great dispute. Indeed, efforts to pin down the issues associated with white-collar crime seem at times much like those of Stephen Leacock's fabled horseman who was noted to be riding off frantically toward all four points of the compass.

A. The Primary Postulation

It seems to me that one issue above all others takes precedence in regard to research and action bearing upon white-collar crime. That issue will be employed to inform the largest part of the present paper and the suggestions that are offered. It has to do with the public definition of

white-collar crime and the attitudes that are manifested toward the phenomena that constitute such crime. By this, I do not mean what the public thinks about diverse aspects of white-collar crime; that is, whether it regards offenses producing certain kinds of harms as seriously as it regards so-called street crimes which bring about equivalent degrees of injury. That issue is a very important one,[1] and work directed toward its further resolution has been outlined in some detail during our deliberations. For me, the implicit policy question underlying such research holds the key ingredient for the direction of matters concerned with white-collar crime. The issue, briefly put, is this: How do we best produce a social and political atmosphere in which the matter of white-collar crime is regarded as of high importance?

Unless such a state of mind comes to prevail, white-collar crime is apt to be neglected as a matter of paramount concern, regardless of its inherent traits. On the other hand, if the public and the authorities come to see white-collar crime as a subject in urgent need of attention and remediation, then funds and personnel will be made available to carry out the kinds of work suggested during the colloquium in other contexts such as it. The issue is one that Becker has labeled as "moral entrepreneurship."[2] By this he means that situations are taken up by certain groups who, on the basis of one or several of a very wide range of considerations, are able to convince others, particularly others who can exert social suasion, that what they are advocating is important.

At times, evils call attention to themselves in a somewhat spontaneous manner. This is particularly true, of course, if they come to be associated with a notoriously dramatic incident, such as a coal mine catastrophe, a thalidomide scandal, a blatant and easily-understood antitrust violation, or a situation involving infants, widows, or other stereotypic, sympathy-arousing victims. But a more sensible path, and perhaps in the long run a more satisfactory one, is to have dedicated persons embark upon an impassioned crusade in behalf of this or that reform. Such a crusade is most apt to encounter success (at least so I would like to believe), if it possesses intrinsic worth and is well-fortified by impregnable persuasive evidence. And it is toward the establishment of such conditions in regard to white-collar crime that the present blueprint is directed.

Let it be noted, to carry the point a bit further, that life is replete with indecencies and injustices. For diverse reasons, some are ignored, some downplayed, while others come to arouse enormous indignation and enterprise directed toward their amelioration. The concentration of resources and attention on highlighted issues often serves to lessen the ills associated with them. In recent times, we have seen a federal focus on

racial injustice, street crime, poverty, women's rights, and a number of other issues that came to be defined as demanding close attention and effective resolution. But each of these problems had been around for a long time, and each was no worse (and in some regards was much more benign) than it had been in earlier periods. None "cried out" for attention, despite the rhetoric commonly employed by those who demand that their concerns take precedence over matters others deem more important.

Most of the issues likely would not have come to the forefront if they did not contain some element of merit, some wrong needing redress; that is, if the fundamental logic of their appeal to the minds and hearts of the constituency they desired to create was not relatively persuasive. At the same time, it is obvious that they sought the advantage of one group at the expense of another, usually on the ground that such a rearrangement would more justly achieve fairness. On the other hand, numerous matters have come to command public attention that later judgment declared to be mindless or at least ill-considered in terms of the achieved results. The successful campaign for the prohibition of the sale of alcoholic beverages is a prime example.[3]

In this regard, a first order of business must be to document that proposed solutions to problems said to emerge from white-collar crime will leave things in a better condition than they were earlier. This can, of course, raise arguable issues: there are, for instance, those who believe that the "harassing" of business operations by governmental regulations that carry heavy penalties produce on balance more undesirable than beneficial results.[4] They insist, for instance, that there should be incentives for things such as satisfactory occupational safety records rather than fines or prison sentences for violations. And they argue that the cost of the marginal degree of protection that the regulations afford workers against such iffy things as workplace "caused" cancer can prove to be so fiscally prohibitive that it will force plants to close and throw a large number of employees out of work.[5] Similar kinds of objections are raised against many other kinds of white-collar crime enforcement strategies.

Resolutions of issues such as the foregoing should assume a very high priority on the agenda of research regarding white-collar crime. Part of the effort ought to include monitoring meticulously the consequences of attempts to control by law the abuses of power that are classed as white-collar crime. I have always believed that no legislated program ought to go forward without a sum of money being appropriated for an independent group that is given a long-term mandate to follow the career of the new program. The report of this group ought to go back to those who decided to try the new approach so that its members may, if necessary, amend their original ideas, and

so that they may come to learn in what ways their earlier views proved to be amiss. Presumably they will make use of such information as a basis for their subsequent decisions.

B. Documenting Developments

That the matter of white-collar crime has during the past five years assumed considerable importance on the political and social scene in the United States should not be taken as a true testament to the growing seriousness of the problems that the term embraces. Some things--such as crimes associated with the profusion of nuclear materials[6]--could not have occurred earlier, since the technology was not at hand. In this sense, more white-collar crime merely reflects additional technology and more complicated life patterns. Indeed, it is not unlikely that there is less of the serious kinds of white-collar crime today than there was in earlier times--or, at least, less of the kinds of offenses that could have been committed then and can be carried out now, such as bribery and antitrust violations. And certainly most of the phenomena that constitute the category of white-collar crime have by and large been with us in some form as far back as memory and archives extend.

Nor is it likely that the emergent concern with white-collar crime is a function of burgeoning amounts of social science and legal research directed to the subject. The reverse is more likely true; that as the subject assumed public and political importance, scholars turned their attention more often to it. Why white-collar crime came forth as a major issue is a matter of considerable importance, because understanding the dynamics of the situation offers an oppportunity to continue to fuel the flame, presuming, of course, that the question of white-collar crime is reasonably deemed to be one that needs and will benefit from increased attention.

It is, perhaps, worth a moment to pin down a few of the signposts that signify the recent movement of white-collar crime into the limelight as an issue of importance. This conference itself certainly is one item of evidence documenting the trend. No such meeting ever had been held until a few years ago, despite the introduction of the concept of white-collar crime into the social scientific literature almost four decades ago.[7] In the past 18 months, there have been colloquia dedicated specifically to white-collar crime at the Temple Law School,[8] at the State University College of New York, Potsdam,[9] at the Battelle Human Affairs Research Center, Seattle,[10] and in Glen Cove, New York, under the sponsorship of Peat, Marwick, Mitchell & Co.[11] Simultaneously, sessions having to do with white-collar crime are now routinely incorporated into the programs of meetings of scholarly associations of sociologists, criminologists, and persons interested in issues of law and society. The 1980 national

conferences of the Law and Society Association, held in Madison, Wisconsin, the American Sociological Association in New York City, and the American Society of Criminology in San Francisco all included such panels. Two of the twelve sessions during the February 1981 meeting of the Western Society of Criminology in San Diego were devoted to white-collar crime, one under the heading of "Corporate Crime," and the other as "Government Crime." White-collar crime, under the generic heading of "abuse of power," in 1980 at Caracas was for the first time a major agenda item at a United Nations' Congress on criminology. The subject also had come to the fore in the work of the Council of Europe, headquartered in Strasbourg in France.

In the U.S. Congress, hearings on white-collar crime currently are underway in the Subcommittee of Crime of the House Committee on the Judiciary.[12] At the same time, academic writing on the subject has grown at almost a geometric rate: the bibliography at the end of this volume provides some indication of the large amount of material relating to white-collar crime that recently has been published.

Perhaps the surest sign of this development has been the decision by authorities at the Federal Bureau of Investigation to downgrade the Bureau's efforts toward the solution of offenses such as bank robbery in order to concentrate more intensively on a spectrum of frauds, corruption, and violations of federal statutes that largely are designed to control the behavior of members of what are said to be the more "respectable" elements of society. The enforcement priorities established by the Department of Justice now list as preeminently important acts such as "crimes against the government by public officials, including federal, state, and local corruption" and "crimes against consumers, including defrauding of consumers, antitrust violations, energy pricing violations, and related illegalities."[13] In Fiscal 1979, 21 percent of the FBI investigative resources was reported to have been allocated to efforts to combat white-collar crime, or organized crime, and less than 10 percent each for crimes against the person and crimes against property.[14] Similarly, the Law Enforcement Assistance Administration has assiduously increased its attention to white-collar crime in terms of research and action grants.

Finally, the work of Ralph Nader and his colleagues merits special mention.[15] It is likely that Nader's campaigns spearheaded priority reconsiderations in regard to white-collar crime. That Nader, though he continues his muckraking with undiminished efficiency, appears to have less support today than in years past may be a reflection of a short public attention span and/or a need for new heroes and new issues. If so, this too should be analyzed to derive lessons regarding the methods

needed to avoid and overcome public cynicism in regard to reformative efforts.

All told, it is patently evident that white-collar crime has become defined in the United States--and indeed in most western civilization countries--as a matter of consummate importance. How can that definition of the situation be solidified and turned to its most productive ends?

C. Programmatic Underpinnings

There are, as I see the matter, two basic prongs on the fork that are required to penetrate and hold fast public and political consciousness in regard to white-collar crime. It is to the enhancement of these dual conditions that research and action programs ought to be directed:

1. The first has to do with convincing persons that white-collar crime is a serious matter and that it is to their advantage to do something about it. This involves a joint appeal to conscience and to self-interest.

2. The second has regard to the need to establish that there exist reasonable potentialities for resolution of problems of white-collar crime in a satisfying and satisfactory manner.

People have little forebearance with irresolvable issues; there is but slight hope for sustaining interest overlong if persons do not believe that there is some hope for improvement, a hope best sustained by demonstrated evidence.

The issue of crime illustrates this point. Crime has been with us eternally; but only in 1964 in the United States did it surface as a paramount political issue. Both presidential candidates that year concentrated on convincing the electorate that they possessed the will and the expertise to protect us from the outrages of street offenses. In 1966, President Johnson appointed a Commission on Law Enforcement and Administration of Justice to study the problem of crime and to formulate a national approach to the matter. Subsequent presidential elections saw opponents vying to convince the public that they would deal with matters of crime skillfully. In 1972, President Nixon stressed in his campaign that he now was winning the war against crime, noting that during the first six months of the year the crime rate increase was "only" 1 percent, lower than for any period during the previous decade.

The denouncement of crime and presidential politics is well known. Crime continues to be a matter of great public anxiety: in fact, it is likely that such anxiety is now at a higher point

than ever before in the country's history. A September 1980 report, subtitled "America Afraid," indicated that "fear of crime in the United States far outstrips the rising incidence of crime and is slowly paralyzing society."[16] But national office-seekers have totally abandoned the issue; it was not mentioned by either major presidential nominee in his acceptance speech. Candidates were perfectly aware that federal policies at best could have but a marginal impact on the amount and kind of crime occurring. But such realities did not dissuade rhetoric. The abandonment of the issue probably is a function of the fact that it seems like a no-win situation, apt to haunt an incumbent in later years. That the abandonment of crime as a national political issue has been accompanied by a severe reduction in the amount of federal funds allotted to research and action is noteworthy. The moral seems clear: not only the significance of an issue, but also its potential resolution must inform research and policy devoted to it. It is with such a goal in mind that the present blueprint is being set forth.

It follows from the foregoing observations that a step of overarching importance is to determine in regard to white-collar crime its biography both as a scholarly endeavor and as a matter of public concern. It was noted by one of us during our sessions that the civil rights movement, the unequal treatment of rich and poor, and the current economic malaise afloat in our nation (the last carrying with it a need for scapegoats) may lie at the core of the increase in attention to white-collar crime. I can offer no better explanatory roster, if as good a one, but I suspect that the matter is a good deal more complicated, particularly if it is examined historically and cross-culturally. We might find it worthwhile to try to pinpoint both social conditions and personal attitudes as they relate to views--and to the intensity of such views--in regard to different forms of white-collar crime. Do feelings about the need for economic equality relate closely to indignation regarding illegal forms of exploitation of others? Or are general economic conditions better bases for predicting the level of concern about this or that kind of white-collar crime? Who believes what about the subject, and what do people do, and what do they say they are willing to do concerning white-collar crime? There is a need for a clearer mapping of the nature and behavior of the constituency.

It would, of course, be particularly valuable to be able to document longitudinally the drift of public opinion on a wide spectrum of issues and to relate these views and their alteration to changes in attitudes regarding white-collar crimes. I think it would have been useful to have followed carefully developments in the Watergate scandal and to have tried to determine how these bore upon attitudes about upper-class illegalities in general and how they related to the level of confidence in politics and business throughout the

nation. Was it those who were the most loyal to the President who later became the most cynical? Or did these people--and which of them--take refuge in explanations and rationalizations of the kind that protect all of us from some of the blunter, discomfiting aspects of life?

Documenting the ebb and flow of public opinion on white-collar crime has two particularly important policy ingredients. First, it allows a determination of how people are feeling about different aspects of the situation as such feelings relate to their own situation and to external events. Second, the tapping and circulation of such views tends to legitimize and strengthen them. That many people were indignant about street crime led others, who had not given the problem much thought, to themselves become indignant when the problem was effectively called to their attention. It may be that, in truth, it will be found that people have trouble summoning up much indignation about most aspects of white-collar crime. If so, this is worth knowing. It does not follow--even, or especially, in a democracy--that the prevailing positions should be persuasive of policy. The results only indicate (presuming that persons who form policy believe white-collar crime to be a serious problem themselves) that ways must be found to persuade others of the accuracy of contrary views. It is always easier to do this if the nature of public opinion is thoroughly known and appreciated.

I particularly favor institutionalizing the monitoring of sentiments over a continuing time frame. Short-term surveys have a tendency to make a brief impact, but their transient nature defeats the purpose of keeping the subject and the temperature of feelings about it continuously in the limelight. The Census Bureau or a Gallup-type organization with an ongoing mandate would be particularly valuable in carrying out work that spotlights attitudes and the conditions that affect such attitudes in regard to white-collar crime.

D. The Definitional Dilemma

I will pause but briefly to take up the much-addressed matter of settling upon a "proper" definition of the bounds of the realm of white-collar crime. This is a matter that had preoccupied many persons since the birth of the concept. There are those who argue that without precision of definition generalizations float and lack adequate anchorage. There are others who insist that some common sense guidelines ought to suffice until more information is at hand to allow sophisticated distinctions to be drawn between the diverse kinds of behavior that are being studied as part of the work on white-collar crime. These persons believe that there is a general understanding of what kinds of acts clearly constitute white-collar crime, and some acceptable fuzziness at the

interstices. Things such as antitrust violations and Medicaid fraud by physicians would be well within the ambit of white-collar crime. There are other illegalities that only arguably can be regarded as coming inside the definitional confines of the category. These would be such things as organized schemes to cheat home owners by pretending to do roof repairs after the customers have been gulled into believing that their homes require such work. Cheating on applications for food stamps or welfare payments by persons in the lower socioeconomic strata also is not a clear contender for classification as white-collar crime. Why such acts should (or should not) be regarded as white-collar crime constitutes a debatable matter, and the decision will go to the person who makes the most persuasive case in terms of the utility of one or another classificatory scheme for the purpose of insight and action.

The definitional task in regard to white-collar crime is in many ways wearisome, perhaps best left to the Miniver Cheevies who would have been at home engaged in medieval theological debates. What is required for the moment, I think, is taxonomy, based upon: (1) existing law (note, for instance, the U.S. Department of Justice's precise listing of each of the statutes it enforces which it considers as falling within the category of white-collar crime[17]); (2) determinations of forms of harm; (3) categorization of the traits of offenders, especially their position in the occupational structure, as such position bears upon their illegal behavior; (4) modus operandi; and (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 which it is called upon to perform, and could form the basis for additional discussion and refinement.

There remains too the possibility of discarding the term "white-collar crime" on the ground that it is too imprecise, even perhaps too inflammatory. There is a tendency, particularly outside the United States, to employ terms such as "economic crime" and "occupational crime" for the kinds of acts regarded here as white-collar crime. I would resist such a temptation, despite its greater intellectual purity, on the basis of the argument that pervades this paper; that it is essential for satisfactory resolution of problems associated with white-collar crime for a forceful constituency to dedicate itself to this end. However metaphorical and imprecise, the term white-collar crime conjures up a real set of ills, and is particularly satisfactory in solidifying an emotional and intellecutal concern about such ills. I take seriously Gordon's speculation that it is not that the police and the public show greater concern about working-class crime because greater interpersonal violence is involved; but rather that

working-class crime is seen to involve greater interpersonal violence because the police show greater concern about it.[18]

E. The Sense of Seriousness

It is argued that the idea of "harm" remains the "most underdeveloped concept in our criminal law."[19] The concept of harm is by no means a simple one. An elaborate philosophical discussion of the ramifications of harm by Kleinig argues that "there is not much mileage to be gained by explicating harm in terms of loss, damage, or injury," because these are nothing but synonyms for most crime; therefore, they lack analytical power. Kleinig advocates as more promising the characterization of harm as "interference with or invasions of a person's interests"; but he grants that the idea of "interests," if it is to be the basis of testable propositions, poses some heady definitional problems.[20]

Nonetheless, the need to establish with some precision the parameters of real and perceived harm from a variety of forms of white-collar crime seems to me to carry a very high research priority. Recently, I and other white-collar crime research veterans have been put in our place by a number of writers because of what they regarded as our inaccurate conclusions concerning what we thought was a mood of public indifference toward most varieties of white-collar crime offending.[21] The tradition of castigating the public for its inertia regarding white-collar crime, well-established by the Biblical prophets, traces its social science origins to Ross, who in the early 1900's bemoaned the fact that white-collar offenses "lack the brimstone smell."[22] Kadish built policy upon presumed public position, noting that the offenses were perceived as "morally neutral," and arguing that punitive sanctioning was untoward when the matter at issue involved no more than the redistribution of fiscal resources.[23] I was pleased to note that one of the colloquium speakers fell back on this position by suggesting that the absence of public outrage was one of the major conditions that handicapped effective prosecution of white-collar crime cases in his jurisdiction. C. Wright Mills agreed too. He thought that the basis of our tolerance of despicable and illegal behavior by persons in the upper echelons of our social system stemmed from the fact that we were envious of them, that in our secret hearts we applauded the exploits of the latter-day robber barons, that we hoped some day to have our own chance to do the same.[24]

But the conclusion of the most recent work, Mills, Kadish, Ross, and the rest of us notwithstanding, is that if congruent harms result from white-collar offenses as eventuate from street crimes, then the public will regard such offenses as equivalently serious and dangerous, and will call for equally stern, if not sterner, punitive measures against the

perpetrators of such offenses. This conclusion stems largely from a reworking of data gathered by Rossi and his colleagues as part of a general sampling of public opinion about a variety of criminal activities.[25]

This is an extraordinarily important line of research work. It demands further exploration and fine tuning. It is important because, if true, it provides a firmer basis for more effective action against white-collar crime; action which this paper constantly suggests is essential if the nascent concern is not to flag and ultimately to disappear. And, of course, there is a subtler agenda that lies behind such work. By establishing a priori the idea that measurement of stipulated harms is an important area to be examined, such equivalence then assumes that very importance: the connective link becomes set in place. It thereafter becomes difficult to argue that a victim is less dead if killed by pollution than if killed by an intrafamily homicide. But the equivalence of the deaths--in a society attuned to cause-and-effect and locating blame--must be documented and highlighted if the comparison is to become manifest and effective.

During our colloquium, Short and Meier underlined some of the deficiencies of the existing data upon which the conclusion about similar public responses to traditional and white-collar offenses producing the same harm is based. There was, for instance, the problem of drift in responses. That is, when the same question was twice put to the same respondent group, the answers tended at times to be significantly different. This undercuts the credibility of the results.

Obviously, there is a vital need for a study that moves beyond obtaining simple public responses to questionnaire items in which the rich details of the various white-collar crime offenses are shorthanded into truncated, very brief items. Though the same kind of truncated queries are used as interview items for both traditional street offenses and white-collar crimes, the former has a much vaster repertoire of affect. Mention a mugger and a whole barrage of stereotypes that excuse and/or aggravate the offense comes into play. The fact is that the behaviors about which the questions are asked represent very much more complicated matters than the item the respondent is presented with. For the white-collar crime, we have not only the objective harm that finds its way into the questionnaire inquiry but, among other things, often a defendant of good manners and amiable mien, who has purchased a lawyer who can in an articulate and persuasive fashion put the very best light onto sometimes fuzzy and arguable fact situations. Indeed, as the Ford Pinto case so well ilustrated,[26] the fundamental issue of the defendant's criminal responsibility for the harm, assumed out-of-hand in the questionnaire studies, often is very much more problematic in white-collar crime cases compared to

the usual street offenses. (That is, there has been a death; a gunshot caused it; did the defendant or did someone else produce that death by firing the gun? Contrast this with: there has been a death caused by cancer; was the cancer, which did not show up until years later, induced by the asbestos dust that the worker inhaled? Was the defendant responsible for the site conditions that produced the asbestos fiber level violations? Did he know that he was acting in a criminally negligent manner?)

In this genre, I would advocate strong support of extensive research seeking to plumb the range of public attitudes toward white-collar offenses and offenders, and the nuances of such attitudes. A variety of videotaped trials, with their components varied along important dimensions, could be employed as stimuli. Respondents should not only be members of the general public and specialized publics (such as prosecutors and corporate officials), but also persons gathered into jury-like groups. English researchers have evolved a procedure in which they employ "shadow juries," persons on the regular jury panel who at the moment are not being pressed into active duty.[27] These persons then witness an actual or simulated trial, and thereafter reach their decision under the unobtrusive scrutiny of the criminal justice research team.

There is also much to be learned from follow-up inquiries with members of juries who sat through trials of persons prosecuted for white-collar crimes. There is a growing literature that suggests that most lay persons do not readily comprehend the often-complicated and obstruse evidence that such trials may entail.[28] They are said to reach their verdicts in terms of spurious consideration, often in a mumpsimus[29] manner. There is a belief that such juries, failing to appreciate the state's evidence, are apt more readily than they should to decide that there is a benefit of a doubt working for the white-collar crime offender. Other commentators, contrariwise, believe that regular jury members are best suited for all kinds of criminal trials, because the integrity of the jury system guarantees things that would be lost under a system of blue-ribbon juries made up of persons particularly competent to weigh white-collar crime evidentiary matters. This is a testable proposition, and ought to be tested.

The aim of the suggested public opinion and jury probes should be to determine and to circulate widely the state of responsiveness to diverse aspects of white-collar crime. In the course of such statements, it would not be amiss (in my judgment) to point out discrepancies that come to be perceived between different forms of death-dealing behavior, and to suggest reasons for this situation, if it proves to be so. It should also prove valuable if we were able to secure satisfactory evidence regarding the relationship between white-collar crime and other forms of criminal behavior. It is

believed by many persons that the existence of upper-class law-breaking impels other kinds of violations--that is, those within their domain--by persons with less power and fewer resources.

F. Additional Activist Inquiries

There are a number of other noteworthy paths to better understanding and advertising of white-collar crimes. Their value is to be judged in terms of their likely impact on the behavior.

1. Statistics. There exists a pressing need for a continuing statistical series that addresses the extent of white-collar crime. Most authorities concede that for starters it would be necessary to confine the reporting system to offenses which come under the jurisdiction of the federal regulatory agencies and the U.S. Department of Justice. There now exists an outstanding review of possible data sources on white-collar crime and a sophisticated critique of their shortcomings and potentialities if certain reforms were introduced.[30]

I would take a first step in the direction of further research and action in this realm by inaugurating as quickly as possible either within the Department of Justice or externally what for the moment would have to be a primitive centralized reporting procedure. It would rely upon information supplied by the agencies which enforce white-collar crime laws. Such agencies would be given guidelines for reporting, but it would be appreciated that by and large the information they would provide would not be comparable, one agency to another, in any serious way; that it would require an array of interpretative aids and suitable reservations in terms of what the reports mean.

The annual document that would emerge from this operation would serve as a research-action-propaganda mechanism. For one thing, it would draw the attention of the public to the work in the criminal arena of the federal agencies, and some of the results of that work. In so doing, it would reinforce incentives of the agencies to do this part of their job particularly effective. Like the Uniform Crime Reports, the document would provide a source for continuing public enlightenment and agitation.

Presumably, in the long run the proposed project by its very existence would exert continuing leverage upon the agencies for more equivalent kinds of reporting, and for a better rationalization of their procedures, where such reforms are appropriate. It would force the agencies to explain publicly any striking changes either in their activities or their reporting systems from one year to the next, by putting their

crime-related work under closer scrutiny. And it would provide research workers with a readily-available source of information for use in hypothesis testing and other kinds of research work for which some statistical baseline is essential.

2. Costs. The statistical inventory proposed above could provide a basis for some tentative attempt to gather cost figures in regard to white-collar crime. No person who has even dabbled on the subject of white-collar crime is immune against the recurring question from media and political sources: Tell us, they ask, just how much does white-collar crime cost the public? Some of the less gun-shy--or more reckless--of us in the field have attempted to attach numerical quantities which they maintain reflect the cost of white-collar crime. Such persons generally are not notably careful to employ any precision in designating just what it is that their figures cover. Indeed, once a set of numbers receives prominent display, future commentators are apt to seize upon it, perhaps add an inflation factor to bring it up to date, and carry on from there.

Obviously, cost figures are believed to be an important element in the area of white-collar crime, and it probably is foolhardy to take the high-minded position that the numbers now in circulation are totally meaningless, except as part of a scare tactic or part of an effort to call attention in a more raucous than accurate manner to the significance of white-collar crime as a national issue. I have no objection to tactics of spotlighting; indeed, such tactics, I think I have made quite clear, seem basic to me for the moment in the area of white-collar crime. But it seems important, and responsible, to base the attention upon information that has true meaning, and upon results that can be obtained--or rebutted--by others who follow the same data-gathering processes. At the moment, the situation in regard to cost estimates for white-collar crime meets neither of these criteria.

The cost issue, then, deserves some research priority, but probably only to the extent that probes are directed in a scrupulous manner to carefully specified kinds of issues. This work should not be done by other than highly skilled economists, preferably persons with considerable training in the matter of placing financial consequences of particular behaviors within relevant categories.

3. Media. The media represent the catalyst by means of which attitudes toward white-collar crime and white-collar criminals are crystallized. There is no arguing, I believe, that the America media have not to date been notably attentive to white-collar crime matters, except when they involve notoriously "newsworthy" figures or dramatic illegal actions. At the same time, it was observed during our colloquium that the

Wall Street Journal, the voice of the business community, runneth over with reports of frauds, extortions, violations, and diverse and sundry other white-collar crimes. The amount of space devoted by that newspaper of the corporate world to law violations within the ranks of its major subscribers seems a bit surprising to a constant reader, as I am. This may offer a clue to the fact that an untapped source of important information and action in regard to white-collar crime lies within the business world itself. If businessmen could be convinced that rectitude pays--both in public relations and in eliminating corrupt competitors--the fight against white-collar crime would have enrolled some powerful allies. The domain of business attitudes toward white-collar crime, then, needs thorough exploration.

To return to the media, it should be noted that there never has been a good counting of what they say and how much they report about white-collar crime. Content analyses and line counts comparing papers such as the Wall Street Journal with other dailies, with the weekly news magazines, and with the television networks and local stations could provide valuable information. Such items as appear in these outlets could be compared with the news releases from regulatory agencies and from the prosecutorial offices from which a large part of it is gleaned. In addition, it would be interesting to relate public opinion about white-collar crime to particular news stories about its occurrence. There now exist fine techniques in the field of mass communications which could be employed to determine the things that newspaper readers see and how much and what of the things seen are retained--or distorted--by the reader. These techniques should be brought into play for research on white-collar crime.

There is a further need to compare the perceptions of the parties involved in news stories with the facts that are transmitted to the public. It is commonplace among virtually all persons who receive media attention that what they say and do is distorted, or at the least is placed in a light other than that which they believe is accurate--or perhaps flattering. Do white-collar offenders feel that they get a fair deal when their cases are covered? Do prosecutors? What distortions do they believe are inserted into the reports of their activities? How do they handle the press and the television crews? And what implications does all of this have for basic issues in white-collar crime: its detection, the framing of public opinion regarding it, and its control?

The best known commentary on this issue of media handling of white-collar crime is the examination of media response to the General Electric antitrust conspiracy in 1961 which concluded that because of the "negative and emasculated reporting of this issue by the bulk of the nation's press [the] reaction of the American public to the largest antitrust suit in

our history has generally been that of mute acquiescence."[31] Harris Steinberg, an attorney who defends white-collar persons accused of crimes, disagrees, maintaining that trials of white-collar offenders are subject to extensive reports in the media and that they produce acute discomfort among defendants because they influence their standing with colleagues whose good opinion they value.[32] Certainly, the response of one General Electric conspirator disclosed grave anxiety. "There goes my whole life. Who's going to want to hire a jailbird? What am I going to tell my children?" he was quoted as saying.[33] But note, on the other hand, the following courtroom interchange:

> Federal District Judge Barrington D. Parker told Mr. Helms [the former director of the CIA, accused of lying under oath about the agency's contributions to undermine the Allende government in Chile] before sentencing: "You dishonored your oath and now you stand before this court in disgrace and shame."
>
> "I don't feel disgraced at all," Mr. Helms later told reporters outside the courtroom after sentencing.[34]

It may be noted that Helms' attorney, Edward Bennett Williams, had told the Judge in the courtroom that Helms would "bear the scar of a conviction for the rest of his life." Following the trial, Williams told newspaper reporters that his client would "wear his conviction like a badge of honor."[35]

Another particularly fine source on the subject of white-collar crime involves the trade publication of the business community. These outlets often express much more frankly and openly--since they are oriented toward the in-group--the opinions that permeate the industries that are served by the publications.

4. Case studies. Differences continue to exist among persons working in the area of white-collar crime about the need to accumulate to a much greater extent than we have to date elaborate case studies of individual offenses. A contrary view is that a more pressing task is to take what we now have and attempt to generalize about it. There also are those who believe that there has been too much free-floating investigation of white-collar crime, and that the basic requirement now is to have such work guided by theoretical notions of some sophistication and pressed into service to test such notions.

The simplest answer--and I believe the one that is truest at this time--is that all these kinds of work require attention and resources. There is no need to exhort persons to concentrate on the latter two research foci--they have deep disciplinary support--but I think that a strong case should be made for the continuing accumulation of detailed examinations of

individual cases of white-collar offending, particularly those employing the corporate form to carry out the law breaking. Such studies should provide fuel to feed grander theoretical explorations and, most particularly, can provide sparks of insight that otherwise would be overlooked by persons who started with predetermined questions that exclusively occupied their attention.

It is correctly maintained that case study work has a tendency toward the journalistic; but I would note that journalism itself is not an unencumbered exercise; it too is directed by a set of postulates which determine what a reporter will or will not see and what he or she will report. In that sense, case studies of white-collar crime conducted by trained criminal justice research workers inevitably will be responsive to the kinds of issues that are stressed in the education which the research workers have received, an education most usually in sociology, economics, criminal justice, or law. It usually is a good idea to have as large as possible an accumulation of factual information before venturing too far theoretically. It is the little facts, the elder Huxley once remarked, that break the back of the grand theories--Huxley also cynically noted that, though moribund, such grand theories have a tendency to carry on as if they were viable.

Case studies, with their particularity and their drama, make interesting and appropriate targets of inquiry. Note how during our colloquium here there was constant reference to this or that case in order to support a more general position. We have heard both informally and in the prepared papers about the Ford Pinto case, the Lockheed overseas bribes, and the Firestone 500 scandal, among very many others. Detailed examination of episodes such as these refines, expands, or contradicts our current beliefs, and points to new areas where productive insights might lie.

Again, longitudinal probes tying the cases to public attitudes might well prove valuable. I recall Charles Winick's rather ingenious little study in which he asked a group of persons what the Mad Bomber (as the newspapers had dubbed him), then at work blowing up pieces of New York, would prove to be like when/if he/she finally was apprehended. The responses provided an intriguing stereotype of how such persons are viewed, though they were almost totally awry in describing the mild-mannered old man with a grudge against the electric company who had committed the offenses.[36] How did people view the culpability of the Ford Company in the Pinto case? What did they think of the Indiana statute? Did their views change as the evidence in the trial unfolded? Did they agree with the verdict, and did it produce any alteration of their original position? And how did the Ford personnel see the prosecution

and what behavior and attitudinal changes did it introduce, if any, into their ranks and those of their competitors?

A research approach in this vein that I have always favored--though it has its problems--involves the monitoring on diverse sites of essentially similiar kinds of cases. How is Medicaid fraud handled in California, New York, North Dakota, and Georgia? The work of different researchers at different sites often can produce complementary materials that light up an issue in much brighter ways than uncoordinated kinds of examinations would do.

5. Organizational studies. Undoubtedly, the most important recent surge in white-collar crime work has been the movement toward a focus on organizational function and structure as these bear upon the amount and types of violations.[37] Most fundamentally, this work replaces emphasis on the individuals involved in the offenses with a focus on the organizational climate. It considers matters such as the interaction of executives, the ethos of the bureaucratic structure, the play of the market, business demands, and ethical codes as forming the roots of white-collar crime. A particular advantage of such work is that it brings to bear concepts that have been tested and refined in a well-established field of inquiry onto an arena of work where they largely have been overlooked. The title of an article by Gross quintessentially demarks the nature of this newer work; it is called "Organizations as Criminal Actors."[38]

In this article, Gross demonstrates how an organizational focus can prove fruitful for pinpointing imperatives pressing toward illegal behavior when he notes a study that examined data on violations of antitrust laws and FTC rules by private firms and found an inverse relationship between the "munificence" of an organization's environment and the likelihood of its being cited for unfair market practices and restraint of trade.[39] This conclusion duplicates an earlier result obtained by Lane,[40] and is in line with some of the findings of Clinard's[41] updating and refinement of the pioneering study of corporate crime by Sutherland.[42] Further pursuit of organizational analysis in the area of white-collar crime should enjoy a high research priority. Also, the vast accumulation of materials by Clinard offers a corpus of data for reanalysis in terms of a number of particularistic hypotheses that are implicit or suggested in the more general study. Finally, there is a need to integrate the large body of literature on the delinquent activities of juvenile gangs with the study of white-collar crime. Theoretical and empirical work on gangs stands out as probably the very best large and cumulative collection of materials in criminology, and it has a direct bearing on how groups organize in terms of their behavior vis-a-vis the law.[43]

What I particularly would like to see in organizational studies of white-collar crime would be on-site investigation; that is, participant-observer work carried out by persons who obtain employment within the corporate world and report on the basis of ethnographic field study about the day-to-day job climate and activities and the manner in which these bear upon attitudes and behaviors in regard to the laws regulating the company's activities.

Speakers during various of our colloquium sessions also have discussed the possible value of ethical codes to contain business behavior that otherwise might violate the criminal law. Generally, outsiders are skeptical about the utility of such codes, suggesting that they look good on paper but are by and large ineffective in accomplishing very much. They are often seen as placating exercises designed to quiet external criticisms of a business or trade. But the matter seems worth more detailed scrutiny. How are such codes generated, what do they say (and not say), and how seriously are they taken by those who promulgate them and those to whom they are directed--indeed, how well are their contents known to the relevant parties?

More generally, the absorption of behavior standards in regard to the law as these standards penetrate an organizational structure demands close investigation. Again, longitudinal study appears likely to produce particularly worthwhile information, especially continuing study of a panel of junior executives from the time they enroll in business school through the period when they move up, if they do, into the ranks of management. Howard Becker has provided a model in his study of the socialization of medical students into the role of practicing doctor,[44] but we lack a good study that duplicates this kind of investigation for the business schools, and beyond their doors. At what point does the young career person begin to identify with goals that involve violation of the law, and by what manner does he come to this position? Cressey's study of embezzlers suggested that a triad of conditions had to be in place before a person would commit a defalcation;[45] are these and/or other items involved in violations of laws regulating corporate behavior? And how about the whistle blowers? What takes place within themselves or in their corporate experience which pushes them to inform on their employer?

Similarly, we ought to know in more precise ways the nature of the rationalizations that permit violators in the world of white-collar crime to carry out their illegal acts. We suspect that virtually all offenders against the criminal law incorporate a set of "explanations" of their behavior that redefines it in a light that they find comfortable to live with. "The law was inexact," they might say. Or, "We never knew we were violating any law." "We did what we did for the

best interest of our employees." Or, "Nobody lost anything through our actions." These are among the innumerable responses of accused white-collar law violators. The nature of such rsponses, their distribution by offense and offender, is a matter worth examination. It has been suggested in one investigation that the most effective manner for dealing with "respectable" lawbreakers, shoplifters in this instance, is to penetrate the shell of their structure of rationalizations and force them to redefine their behavior in more meretricious terms.[46] It would seem especially important to compare offenders with non-offenders in regard to a large number of things that must illuminate the distinction between law-abiding and law-breaking acts.

5. Miscellaneous matters. There are a number of other matters that merit passing attention as promising research realms. Interviews with incarcerated white-collar offenders could yield material parallel to that which we have derived from studies of other kinds of inmates: the offenders could reflect on their past behavior, inform you about their presumed future, and give you ideas about their perception of the suitability of sentence. More than most personnel involved in white-collar crime, these people represent an available study population, literally one with time on its hands, and probably one that would prove reasonably cooperative. Similarly, retired business executives with no existing stake in their careers probably could provide valuable ideas about the acts and attitudes of the workplace while they were involved in it that could bear upon our understanding of white-collar crime. I also think that courtrooms offer outstanding research sites, since the Sixth Amendment allows untrammeled access to their environs, and an astute observer, watching a series of white-collar crime trials, could add greatly to our knowledge of their dynamics. Similarly, the Freedom of Information Act offers an unequaled opportunity to obtain data that long has been denied researchers and which could prove invaluable for more informed studies of white-collar crime.[47] Lastly in this grouping, I would note the need to launch and evaluate programs designed to incorporate awareness of white-collar crime in students at the secondary level, in colleges and universities, and in professional schools.

G. Controlling White-Collar Crime

The ultimate goal of concomitantly increasing concern and encouraging research about white-collar crime is to enhance the quality of life for the general public and for those who currently are harmed by the behaviors. There is a need in this context to determine the effectiveness of existing and proposed methods for dealing with white-collar crime and those who perpetrate it.

The issue of deterrence has to stand as a crucial issue in regard to white-collar crime, as it is in most aspects of criminological work. Considerable controversy exists regarding the fairness and the efficacy of a panoply of punishments that are suggested for white-collar crime offenders. The penal sanction is sometimes said to be notably useful in deterrence terms because white-collar criminals in general are believed to be rational planners and persons particularly responsive to the shame and degradation of incarceration.[48] Other writers feel that the focus on criminal enforcement and penal sanctions so emasculates efficiency--largely because of the complex nature of the cases--that it is counterproductive.[49] There also is a strong belief that penal sanctions usually are much too harsh for white-collar crime, and that there are other enforcement consequences that would prove more effective in terms of both specific and general deterrence.

Equal protection laws seem to inhibit any truly experimental designs that might definitively test some of the basic propositions surrounding these disparate viewpoints. But there are naturalistic conditions that can be scrutinized closely; that is, we can concentrate on monitoring carefully the seeming consequences of one or another method which is employed for dealing with specific instances of white-collar crime. In terms of consent decrees, for instance--a subject which aroused some controversy during our discussions--it would appear worthwhile to determine how businesses feel about the severity of such decrees, and how their future behavior appears to be influenced by the entering of a consent decree against them. Certainly, the effectiveness of the sanction of publicity, strongly recommended in some well-argued papers by Fisse,[50] should be looked at along a variety of exploratory dimensions. Anthony Sampson, for instance, noted in anecdotal fashion that a suit against ITT was followed by a boom in business for the Sheraton Hotels, which ITT owned, because, he thought, any publicity, even bad publicity, created name awareness, an essential element in consumer appeal.

It needs to be considered also that some punishments can result in behaviors worse than those they were designed to alleviate. An illustration is provided in the area of sex offenses by Graham:

> In Scotland, even more feared than the pillory was the punishment of having to appear in church every Sunday for a given number of weeks . . . to be harangued for half an hour in front of the congregation by the minister--for which, in some churches, offenders were fastened to the wall in iron collars, or jougs. This was the penalty for adulterers and fornicators of both sexes, and was greatly feared. So much so, that it caused a sharp rise in the infanticide rate, for women

who had illegitimately become pregnant preferred to risk the capital penalty for infanticide rather than admit the facts and suffer such extreme humiliation.[52]

The range of penalties proposed for white-collar crimes involving corporations has included suspension of corporate managers and board members, temporary bans on corporate advertising because of deceptive practices, required publication of violations to inform consumers, and imposition of corporate bankruptcy.[53] How the comparative utility of such sanctions might be determined is not a simple matter, but it is one to which considerable attention needs to be directed. In the area of probation too, the idea that a white-collar offender, as a condition of his probation, must submit to a reasonable audit of his financial dealings, and must provide periodic statements of his income and expenses, is another innovative measure--among many others proposed--that ought to be given a trial and subjected to evaluation.[54]

A detailed analysis of the role of statutory requirements as they bear upon the effective delineation and control of white-collar crime also must receive a high priority on any research agenda. The Library of Congress recently completed a review of laws dealing with the liability of corporate officials for the negligence of persons who are supposed to be under their supervision.[55] We could use further inventories of laws and their implications for dealing with white-collar offenses and offenders. August Bequai, for example, records what he regards as the archaic nature of the legal and administrative arrangements in the federal government today for dealing with complex white-collar crimes. First he refers to consumer fraud cases:

> Prosecuting consumer fraud cases, as with other white-collar crimes, is seriously hampered by various drawbacks. It is difficult, for example, to prove that, in fact, the outcome has been the product of a willful intent to defraud the public rather than an error in business judgement. In addition, the felons in these cases argue that their agents, and not they, were behind the scheme. Proving that both agent and principal acted jointly is rarely an easy task. Felons also argue, in defense, that it is merely salesmanship, that in every business there concededly is an element of "puffing." Liability is difficult to attach to the actual manipulators, and as a consequence, prosecution usually takes the form of an injunction or consent agreement. Criminal actions are rare and hampered by a judiciary that metes out lenient sentences against those convicted of frauds.[56]

There recently have been some fine detailed studies of the sentencing practices and dynamics behind them in white-collar crime cases.[57] As the implications of this work are absorbed, they undoubtedly will suggest fruitful follow-up investigations. But how do we deal with Bequai's sweeping allegation that:

> In large part, white-collar crime prosecutions have been hampered by bureaucratic redtape, absence of a firm commitment, [but see Weaver[58]] the politicized nature of the present U.S. Attorney's Offices, and a hesitancy to shift prosecutorial strategies. The entire federal prosecutorial apparatus is in need of review and revision.[59]

This appears a rather broad broom, but it does suggest that we could probably benefit from an organizational study of the prosecution of white-collar crime both on the federal and state levels. In fact, the determination of the proper roles of state as contrasted to federal authorities in the field requires closer attention. My recommendation as an initial step would be for the identification of particularly effective organizational arrangements, which then will be regarded as Model Programs, and the reporting and dissemination of information about the arrangements and tactics that appear to be the foundation of their achievements.

In regard to prosecutorial tactics, the matter of whether white-collar crime cases are pursued as civil suits or moved against under criminal law is another issue worth study. Instances that appear to me to merit criminal prosecution may well not be so treated because the persons involved, if they harbor any desire for "revenge" or "justice" against the depredators, harbor an even greater desire to get a money settlement or reward. They would rather sue than see a crime prosecuted. State and federal attorneys are apt either to be overloaded with work or moved by a spirit that dictates that they will not do anything more than they need to do. There was a common law doctrine, since fallen into disuse, that might well be reexamined as part of a general research probe into the whole issue of sanctions against white-collar crime. It required that:

> Where injuries are inflicted on an individual under circumstances which constitute a felony, that felony could not be made the foundation of a civil action at the suit of the person injured against the person who inflicted the injuries until the latter had been prosecuted or a reasonable excuse shown for his non-prosecution.[60]

There remains a dearth of useful information from other societies in regard to the enforcement procedures and sanctions

that they employ for white-collar crime violations. Such materials might well suggest more effective ways we could marshal our resources for the same purposes. Chambliss has argued that overall socialist societies manifest less crime than capitalist societies. He believes that the seemingly striking variations in crime rates between places such as China and the Soviet Union are primarily a function of their degrees of commitment to the "true" principles of Marxist doctrine.[61] Criminologists working in Communist societies like to point out that they have no corporate crime, but this is a bit of semantic slight-of-hand, since they have no corporations. There is ample evidence that violations of the laws regulating their employment behavior by managers and employees of Communist collectives is not at all uncommon,[62] and it may be that the extent of such crime provides support for Smigel's thesis that people find it easier to steal from impersonal organizations than they do from individuals or from small, more intimate business enterprises.[63]

The vast array of cross-cultural information on white-collar crime that barely has been tapped to date might inform us on why some societies seem to produce a cadre of relatively honest and trustworthy political officeholders,[64] while others are plagued by dishonesty among their officials. In Japan, theorists speculate that custom and structural variables insist that officeholders engage in often-illegal practices, largely as a function of fiscal demands placed upon them by their constituents.[65] We might well learn more about our own society by distancing ourselves a bit when we regard what happens elsewhere.

H. A Concluding Caveat

To take on the task of establishing some research and action priorities, in the manner that has been attempted in this paper, itself implies an understanding of the elements of the process that will prove most effective in reaching preordained goals. That we possess such an understanding is, of course, arguable. We do not truly know whether the most effective approach to stipulated success is to make available "suitable" sums of research money and to allow the imaginations and interest of those seeking such funds to dictate what they propose to accomplish, or whether the outcome is likely to be more satisfactory if preestablished, detailed blueprints are drawn up and workers forced to toil only within these set boundaries. There are strong arguments on both sides. Note, for instance, Cottrell's conclusion about the same problem and its consequences for the quality of the wall paintings and artifacts that are found in the tombs of early Egyptian pharoahs:

> In art the freedom of the craftsman was restrained by a rigid religious convention, but within the limits set by this convention, perhaps because of them, the Old Kingdom sculptors produced work of an austere beauty and majesty; work which ... was never equalled by Egyptian craftsmen of later centuries.[66]

Cottrell's thesis regarding the enabling aspects of set boundaries finds support in Proust's remark that the "tyranny of rhyme" often forces poets "into the discovery of their finest lines."[67] These arguments for rigid structure and explicit guidelines, so that the worker does not flounder because of an overly amorphous assignment, and are seconded by Riesman regarding matters nearer to our work here. Riesman suggests that superior results often are achieved in response to a mundane pragmatic issue in contrast to when grander concerns underlie the effort:

> [W]hen I examine the work done by scholars in universities in comparison with the applied work done in answer to some client's need, I cannot argue that the track of the discipline produces in general more seminal research than the quest of an answer to an extra-academic problem. Only a very rare person will be an intellectual self-starter.

On the other side, the unbridled play of curiosity, the freedom to think in an unrestricted manner, is believed by some to be likely to yield the highest dividends. Indeed, arguments might be set forth that the basic thrust of our work here is counterproductive since it formalizes overmuch in a collaborative manner things that best should be individualistic enterprises. Let it be remembered that, in large measure, we all are present today because Edwin H. Sutherland, a lone scholar, working by himself only with library resources, came by means of an obscure process that he called "differential association"[69] to produce the classic work on a topic virtually ignored theretofore, a topic that he labeled "white-collar crime."[70] I recently have, with a colleague, traced in some detail the personal and intellectual sources that constituted Sutherland's patrimony;[71] it seems that he chose his subject largely because it was one that interested him, and one about which he had strong feelings. Most assuredly the roots of his concern did not emerge from a preconstituted agenda. In short, as it is with our subject, our purpose too contains many contentious components. At the very least, its efficacy should not be taken for granted. Indeed, even the commitment to a more decent world, the commitment that I suggested lies behind work on white-collar crime, does not go

without challenge. Note the observation made by a character in a novel written by a law professor at the University of Michigan: "One receives only imperfect justice in this world; only fools, children, left-wing Democrats, social scientists, and a few demented judges expect anything better."[72] If so, our work here enlists us as part of a motley group, indeed.

FOOTNOTES

1. The key article on the subject is Laura Shill Schrager and James F. Short, Jr., "How Serious a Crime? Perceptions of Organizational and Common Crimes," in Gilbert Geis and Ezra Stotland (eds.), White-Collar Crime: Theory and Research (Beverly Hills, CA: Sage, 1980), 14-31.

2. Howard S. Becker, Outsiders (New York: Free Press, 1963), pp. 147-163.

3. Joseph R. Gusfield, Symbolic Crusade (Urbana: University of Illinois Press, 1966).

4. James Q. Wilson, The Politics of Regulation (New York: Basic Books, 1980); James Greene, Regulatory Problems and Regulatory Reform: The Perceptions of Business (New York: Conference Board, 1980).

5. Cf. Seymour Martin Lipset and William Schneider, "The Public View of Regulation," Public Opinion, 2 (January-February 1979), 6-13.

6. Herbert Edelhertz and Marilyn Walsh, The White-Collar Challenge to Nuclear Safeguards (Lexington, MA: D.C. Heath, 1978).

7. Edwin H. Sutherland, "White-Collar Criminality," American Sociological Review, 5 (February 1940), 1-12.

8. Proceedings to be published in the Temple Law Quarterly in late 1980.

9. Proceedings, edited by Phillip Wickman, to be published in 1981.

10. Proceedings, edited by Herbert Edelhertz, published in late 1980, by Lexington Press.

11. See Robert K. Elliott and John J. Willingham, Management Fraud: Detection and Deterrence (New York: Petrocellli, 1980).

12. See U.S. House of Representatives, Subcommittee on Crime, Committee on the Judiciary (95th Cong., 2d Sess.), White-Collar Crime (Washington, D.C.: Government Printing Office, 1979); Ibid. (96th Cong., 2d Sess.), Corporate Crime (Washington, D.C.: Government Printing Office, 1980).

13. U.S. Attorney General, National Priorities for the Investigation and Prosecution of White Collar Crime: Report of the Attorney General (Washington, D.C.: Government Printing Office, 1980).

14. Ibid.

15. There is a small library of production from this group. See, e.g., James S. Turner, The Chemical Feast (New York: Grossman, 1970); John C. Esposito, The Vanishing Air (New York: Grossman, 1970).

16. Figgie Report on Fear of Crime: American Afraid (New York: Ruder and Finn, 1980). See L.A. Times, September 19, 1980.

17. U.S. Attorney General, op. cit., note 13.

18 David M. Gordon, "Capitalism, Class and Crime in America," Crime and Delinquency, 19 (April 1973), 163-186.

19. G. O. W. Mueller, "Criminal Theory: An Appraisal of Jerome Hall's Studies in Jurisprudence and Criminal Theory," Indiana Law Journal, 34 (Winter 1959), p. 220.

20. John Kleinig, "Crime and the Concept of Harm," American Philosophical Quarterly, 15 (January 1978), 27-36.

21. Schrager and Short, Jr., op. cit., note 1.; Marilyn E. Walsh and Donna D. Schram, "The Victim of White-Collar Crime: Accuser or Accused," in Geis and Stotland, op. cit., note 1, at 32-51.

22. Edward Alsworth Ross, "The Criminaloid," The Atlantic Monthly, 99 (January 1970), 44-50.

23. Sanford H. Kadish, "Some Observations on the Use of Criminal Sanctions in Enforcing Economic Regulations," University of Chicago Law Review, 30 (Spring 1963), 423-449.

24. C. Wright Mills, The Power Elite (New York: Oxford Uiversity Press, 1956), 343-344.

25. Peter H. Rossi, Emily Waite, Christine E. Bose, and Richard E. Berk, "The Seriousness of Crimes: Normative Structure and Individual Differences," American Sociological Review, 39 (April 1974), 224-237.

26. See generally Ronald C. Kramer, "The Ford Pinto Homicide Prosecution: Criminological Questions and Issues Concerning the Control of Corporate Crime," paper presented at the American Society of Criminology, Philadelphia, 1979.

27. Sarah McCabe, and Frank Sutcliffe, Defining Crime (Oxford: Blackwell and Mott, 1978).

28. See, e.g., "Now Juries Are on Trial: 'Big Cases' Call Into Question Their Ability To Do Justice," Time, September 3, 1979. A few federal judges have refused to allow jury trials in such cases, relying upon a footnote in a 1970 Supreme Court decision that suggests that the Seventh Amendment right to a jury may be limited by "the practical abilities and limitations" of jurors.

29. In dictionary definition, mumpsimus refers to "an error or prejudice obstinately clung to; the term is supposedly taken from the story of an illiterate priest who, in his devotions, had for 30 years used mumpsimus for the proper Latin word sumpsimus, and who, on his mistake being pointed out to him, replied, 'I will not change my mumpsimus for your new sumpsimus. . . .'"

30. Albert J. Reiss, Jr., and Albert Biderman, Data Sources on White-Collar Law-Breaking (Washington, D.C: Government Printing Office, 1980).

31. The New Republic, 144 (February 20, 1961), p. 7.

32. Harris B. Steinberg, "The Defense of the White-Collar Accused," American Criminal Law Quarterly, 3 (Spring 1965), 129-138.

33. Richard A. Smith, "The Incredible Electrical Conspiracy," Fortune, 63 (April 1961), 132-137; 63 (May 1961), 161-164.

34. Quoted in Joseph Heller, Good as Gold (New York: Pocket Books, 1980), p. 357.

35. Ibid.

36. Charles Winick, "How People Perceived the 'Mad Bomber,'" Public Opinion Quarterly, 25 (Spring 1961), 25-38.

37. A key article is M. David Ermann and Richard J. Lundman, "Deviant Acts by Complex Organizations: Deviance and Social Control at the Organizational Level of Analysis," Sociological Quarterly, 19 (Winter 1978), 55-67.

38. Edward Gross, "Organizations as Criminal Actors," in Paul R. Wilson and John Braithwaite. (eds.), Two Faces of Deviance (St. Lucia: University of Queensland Press, 1978), 199-213.

39. Barry M. Staw and Eugene Szwajkowski, "The Scarcity-Munificence Component of Organizational Environments and the Commission of Illegal Acts," Administrative Science Quarterly, 20 (September 1975), 345-354.

40. Robert E. Lane, "Why Businessmen Violate the Law," Journal of Criminal Law, Criminology, and Police Science, 44 (July 1953), 151-165.

41. Marshall B. Clinard, Illegal Corporate Behavior (Washington, D.C.: Government Printing Office, 1979).

42. Edwin H. Sutherland, White-Collar Crime (New York: Dryden, 1949).

43. Among the best known works are Albert K. Cohen, Delinquent Boys (New York: Free Press, 1955); Richard A. Cloward and Lloyd Ohlin, Delinquency and Opportunity (New York: Free Press, 1960); James F. Short, Jr., and Fred L. Strodtbeck, Group Process and Gang Delinquency (Chicago: University of Chicago Press, 1965); and Walter B. Miller, "Lower Class Culture as a Generating Milieu of Gang Delinquency," Journal of Social Issues, 14 (April 1958), 5-19.

44. Howard S. Becker, Blanche Geer, Everett C. Hughes, and Anselm L. Strauss, Boys in White: Student Culture in Medical School (Chicago: University of Chicago Press, 1961).

45. Donald R. Cressey, Other People's Money: The Social Psychology of Embezzlement (New York: Free Press, 1953).

46. Mary Owen Cameron, The Booster and the Snitch (New York: The Free Press, 1964).

47. Susan Long, The Internal Revenue Service: Measuring Tax Offenses and Enforcement Response (Washington, D.C.: Government Printing Office, 1980).

48. Gilbert Geis, "Deterring Corporate Crime," in Ralph Nader and Mark J. Green. (eds.), Corporate Power in America (New York: Grossman, 1973), pp. 182-197.

49. Christopher D. Stone, Where the Law Ends (New York: Harper amd Row, 1975).

50. See, e.g., Brent Fisse, "The Use of Publicity as a Criminal Sanction Against Business Corporations," Melbourne University Law Review, 8 (June 1971), 107-150.

51. Anthony Sampson, The Sovereign State of ITT (New York: Stein and Day, 1973), p. 15.

52. Henry G. Graham, The Social Life of Scotland in the 18th Century (London: A&C Black, 1899), p. 43.

53. Morton Mintz and Jerry S. Cohen, America, Inc. (New York: Dial, 1971).

54. Elsie L. Reid, "Looking at the Law," Federal Probation, 41 June 1977), 50.

55. See U.S. House of Representatives, Corporate Crime, op. cit., note 12.

56. August Bequai, White-Collar Crime (Lexington, MA: D. C. Heath, 1978), p. 53.

57. See Kenneth Mann, Stanton Wheeler, and Austin Sarat, "Sentencing the White-Collar Criminal," American Criminal Law Review, 17 (Spring 1980), 479-500; Ilene Nagel Bernstein and John L. Hagan, "The Social Organization of Criminal Justice Processing in Ten American Cities," to be published in the American Sociological Review, October 1980.

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59. Bequai, op cit., note 56 at 151.

60. Smith v. Selwyn (1914) 3 K.B. 98.

61. William Chambliss, paper presented on Conference on Crime in Developing Countries, Ibidan, Nigeria, July 1980.

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63. Erwin O. Smigel, "Public Attitudes Toward 'Chiseling' With Reference to Unemployment Compensation," American Sociological Review, 18 (February 1953), 59-67.

64. Ronald Wraith and Edgar Simkins, Corruption in Developing Countries (London: Allen, 1963).

65. Mamoru Iga and Morton Auerback, "Political Corruption and Social Structure in Japan," Asian Survey, 17 (June 1977), 556-564.

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Appendix A

LIST OF PARTICIPANTS

A RESEARCH AGENDA ON WHITE-COLLAR CRIME

DULLES HOLIDAY INN
August 21-22, 1980

Authors

Simon Dinitz
Professor of Sociology
Ohio State University
Columbus, Ohio 43210

M. David Ermann
Associate Professor
of Sociology
University of Delaware
Newark, Delaware 19711

Gilbert Geis, Professor
Program in Social Ecology
University of California
Irvine, California 92717

Richard Lundman
Associate Professor
of Sociology
The Ohio State University
Columbus, Ohio 43210

Robert F. Meier
Associate Professor
Social Research Center
Washington State University
Pullman, Washington 99164

James F. Short, Professor
Social Research Center
Washington State University
Pullman, Washington 99164

Edwin H. Stier, Director
Division of Criminal Justice
State of New Jersey
Princeton, New Jersey 43210

Ezra Stotland, Director
Society and Justice Program
University of Washington
Seattle, Washington 98195

John H. Thomas, Director
Center for Policy Studies
State University of New York
Buffalo, New York 14214

Participants

Bernard Auchter
Program Manager
National Institute of Justice
Washington, D. C. 20531

Richard Barnes, Director
Center for the Study of the
Correlates of Crime and
Criminal Behavior
National Institute of Justice
Washington, D. C. 25031

W. Robert Burkhart, Director
Office of Research Programs
National Institute of Justice
Washington, D. C. 20531

Herbert Edelhertz, Director
Law and Justice Study Center
Battelle Human Affairs
Research Centers
Seattle, Washington 98105

Donald Foster, Director
Economic Crime Enforcement
Unit Program
Criminal Division
U.S. Dept. of Justice
Washington, D. C. 20531

John Gardner, Director
Office of Public
Policy Research
University of Illinois
at Chicago Circle
Chicago, Illinois 60680

Fred Heinzelmann, Director
Community Crime Prevention Div.
National Institute of Justice
Washington, D. C. 20531

Steven Hitchner, Director
Office of Policy and
Management Analysis
Criminal Division
U.S. Dept. of Justice
Washington, D. C. 20531

Barbara McClure
Analyst in Social Legislation
Congressional Research Service
Library of Congress
Washington, D. C. 20540

Thomas D. Overcast
Research Scientist
Law and Justice Study Center
Battelle Human Affairs
Research Centers
Seattle, Washington 98105

Mark Richard
Deputy Assistant Attorney General
Criminal Division
U.S. Dept. of Justice
Washington, D. C. 20531

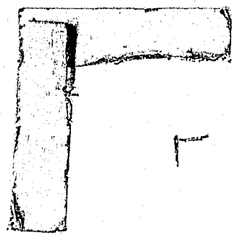
Miriam Saxon
Analyst in Social Legislation
Congressional Research Service
Library of Congress
Washington, D. C. 20540

Joseph B. Tompkins
Office of Policy and
Management Analysis
Criminal Division
U.S. Dept. of Justice
Washington, D. C. 20531

Stanton Wheeler, Director
Yale/NIJ Research Agreements
Program to Study White-
Collar Crime
Yale University
New Haven, Connecticut 06520

National Institute of Justice Staff

Richard Laymon
Lois Mock
Richard Rau
Winifred Reed



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