Federal Probation

JUNE 1992

Federal Probation

A JOURNAL OF CORRECTIONAL PHILOSOPHY AND PRACTICE

Published by the Administrative Office of the United States Courts

VOLUME LVI JUNE 1992 NUMBER 2

This Issue in Brief

Tough Boyz & Trouble.—In an article subtitled "Those Girls Waiting Outside the D.C. Jail Remind Me of Myself," *Washington Post* reporter Patrice Gaines-Carter writes about the young women who love incarcerated men—the women who find a certain strength and power in men who operate outside the law. In a candid reminiscence of her own youthful attraction to "young black men who toted guns," the author describes how she "had to spend a summer in jail to discover the truths that serve me now."

Probation and the Drunk Driver: A Cost of Being "MADD."—In 1982, California instituted laws designed to severely sanction persons convicted of drunk driving. Prior research has indicated that these laws have had a negative impact on California's courts and jails. Authors Patrick Kinkade, Matthew C. Leone, and Thomas Wacker report on research into the effects the tough DUI laws have had on probation in California and the differing experiences of specific counties.

Co-dependency and Probation.—Chemical dependency, the dependence on drugs and/or alcohol, destroys many lives: not only the life of the chemical user, but the lives of persons connected to the user as well. Author Mickie C. Walker describes how chemical dependency affects the family system, causing rules, behaviors, roles, attitudes, and defense mechanisms to change so that family members can cope with the stress of chemical dependency. How family members might adversely affect probation work is discussed.

Following the Penological Pendulum: The Survival of Rehabilitation.—Author David Shichor reviews the changes in penological thinking and control policies that have occurred in the last two decades. This article focuses on the analysis of rehabilitation as a leading punishment principle that declined during that period of time and argues that there are several factors which contribute to its survival and its sustained importance in Western and American penology. These factors include an enduring public support and an acceptance by social scientists.

Understanding and Sanctioning the White Collar Offender.—Recent revelations of insider training and savings and loan defaults have focused public attention on white collar crime. Controversy surrounds this type of crime and the elite offenders who commit it. Author Stephen J. Rackmill defines white collar crime, discusses elements common to such crimes, and explains who the victims are and how

CONTENTS

Understanding and Sanctioning the White Collar Offender

By Stephen J. Rackmill
Chief United States Probation Officer, Eastern District of New York

RECENT REVELATIONS of unscrupulous insider trading and the fall of the likes of Dennis Levine, Ivan Boesky, and Michael Milken have been considered by some to be the biggest events on Wall Street since the 1929 crash. Such happenings in the financial hub of the United States, as well as recent savings and loan defaults, have made the public more aware of the stockbrokers, stockwatchers, attorneys, bankers, business consultants, and assorted other professionals who, by self-serving actions, cause an unsuspecting society to suffer enormous economic loss. The message that the public has received, however, is dichotomous and confusing. Presumably successful executives and elite civic leaders have been exposed as criminals who have embraced deviant values and a clandestine lifestyle and who have flaunted the law and abused trust.

In evaluating the impact of this type of behavior upon our social order, a leading jurist made the following observation:

> In our complex society, the accountant's certificate and the lawyer's opinion can be instruments for inflicting pecuniary loss more potent then that of the chisel or crowbar (*United States* v. *Benjamin*, 328 F.2nd 854 (1964).

More than half a century ago, in February 1940, the noted University of Chicago criminologist, Edwin Sutherland, published a paper in the *American Sociological Review* which revolutionized existing theories of criminal etiology by presenting a controversial concept that he labeled "White Collar Crime." In this and subsequent works, Professor Sutherland freed traditional criminological thinking from its total dependence on the Uniform Crime Reports by thrusting into the limelight a theory of criminal behavior that brought attention to corporate deviance and upperworld criminality.

In his well documented study, *White Collar Crime* (1949), Sutherland traced and analyzed the records of 70 large corporations and found a total of 980 decisions levied against corporate America in violation of existing law. He concluded that a number of individuals from the upper socioeconomic classes were engaged in criminal behavior and defined their particular form of criminality as "a crime committed by a person of respectability and high status in the course of his occupation (p. 9). In this landmark work, Sutherland presented empirical data in support of his position that crime is committed by the upper socioeconomic class.

During the years since Sutherland's initial revelations, there has been substantial controversy in attempting to properly define and comprehend this phenomenon that labels corporate executives as common criminals. This article will examine the concept of white collar crime by defining the concept, analyzing its major components, its victims and how offenders have been regarded by society and the judicial system.

Defining White Collar Crime

There has been little agreement as to a clear working definition of the term white collar crime since it is sociological in nature rather than a refined legal entity. White collar crime is oftentimes confined to two types of criminal activities, occupational and organizational deviant behavior. The former refers to offenses committed by individuals for personal benefit in conjunction with their occupation, while the latter refers to crimes of business, corporations, or their officials on behalf of their employers. Submitting that Sutherland omitted substantial types of crime by confining his definition to activities that occur in the offender's occupation, Edelhertz et al. (1977, p. 3) expanded the scope of white collar criminality by including other offenses that they believe better express the magnitude of the problem. They define white collar crime as:

> An illegal act or series of illegal acts committed by non-physical means and by concealment or guile, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage.

Quinney and Clinard (1973) expanded the term white collar crime to include corporate and occupational crime. Schrager and Short (1978) pointed out that the concept of referring to offenses committed by organizations is inadequate since it did not include embezzlement and other thefts that are committed by individuals against their employers. In attempting to define white collar crime, James Coleman (1985, p. 5) concludes that it is "a violation of the law committed by a person or a group of persons in the course of an otherwise respected and legitimate occupation or financial activity."

The *Dictionary of Criminal Justice Data Terminology* defines white collar crime as:

> Non-violent crime for financial gain committed by means of deception by persons whose occupation status is entrepreneurial, professional or semi-professional and utilizing their special occupational skills and opportunities; also, non-violent crime for financial gain utilizing deception and committed by anyone having special technical and professional knowledge of business and government, irrespective of the person's occupation (Manson, 1986, p. 2).

This definition includes not only the nature of the crime but the occupational status of the offender and his special knowledge. The American Bar Association (1976) describes economic crime as any nonviolent, illegal activity which principally involves deceit, misrepresentation, concealment, manipulation, breach of trust, subterfuge, or illegal circumvention. Geis (1974) describes avocational crime as crime which is definable by the prospect of public labeling as a criminal, committed by one who does not think of himself as a criminal and whose major source of income or status is something other than crime.

On the basis of the above, one can conclude that white collar crime is not an official legal category. The term is often used to group offenses with common characteristics that distinguish them from other forms of violent property and public order offenses. These generalized definitions are quite problematic, as they lack precision and are subject to extensive controversy.

Elements of White Collar Crime

White collar crimes have common elements, and persons investigating and prosecuting these offenses may benefit from identifying such elements. Edelhertz et al. (1977, pp. 21-26), who list five principal elements, believe that, first, offenders are aware that their activities are wrongful or very much in a gray legal area, regardless of whether they know which particular law they are violating. Oftentimes, the intent may be to avoid what is required by law, such as financial disclosures and transaction reports, which would tip off the victim. The next element of deceit is often a disguise of purpose, which frequently takes the form of a facade of legitimacy in order to cover actions and implement a scheme. Pieces of paper are not what they appear to be, and criminal objectives are accomplished with bogus written materials and verbal misrepresentations. The third element oftentimes plays on the victim's susceptibility, ignorance, or carelessness, according to Edelhertz et al., who state:

> In view of the existence of widespread administrative and regulatory protections for consumers and investors, the offender will often have to rely not only on the inability of the proposed victim to pierce his disguise, but also on the procedures of such protective agencies to fail to uncover the admissions and misrepresentations which make up this disguise. This reliance is grounded on the knowledge that regulatory and administrative agencies cannot fully investigate the accuracy and completeness of every piece of paper filed with them (p. 23).

The fourth step for the successful execution of a white collar offense is to induce the victim to voluntarily perform an act for the scheme to be accomplished. A signature on a contract or payment of money to close a deal to purchase a specific product may be the measure necessary to culminate a scheme. Finally, white collar offenders will do everything possible to ensure that they are never recognized as a criminal, since they must operate in the open and require victim cooperation. (This is demonstrated in Ponzi schemes, where the objective is to expand the net so that the earlier, duped victims do not know that they have been cheated, since money obtained from later victims will be used to conceal the crime). In white collar offenses, concealment not only means hiding one's identity, but, more frequently, hiding criminal behavior. For example, in a price-fixing or antitrust case the objective is to have persons affected believe that market forces are determining prices rather than illegal agreements.

Victims of White Collar Crimes

Edelhertz et al. (1977) divide the victims of white collar crimes into individual victims, business victims, and governmental victims. Individuals with basic human needs are defrauded regularly as a result of assorted consumer frauds. These range from being cheated on weights and measures at a local supermarket to price-fixing violations that raise the costs of goods, commodities, and services in every sector of the community. The desire to improve one's lot in life often causes individuals to be the target of offenders who promote phony trade and occupational schools, correspondence courses, and the like. Other frauds involve assorted misrepresentations contrived to convince individuals to invest their assets. Such misrepresentations include assurances of substantial profits, increased security, and substantial tax savings. The frauds have often cost victims their life savings and leave them financially and emotionally devastated.

Businesses are also victimized by white collar criminals. They are the victims of assorted frauds and are frequently placed at a competitive disadvantage. Businesses are the victims of insider embezzlement offenses where assets are looted by employees who may have the potential to bring destruction to an organization. Traditionally, kick-backs, insurance and credit card frauds, and other assorted "rip-offs" ranging from advance fee schemes to padded accounts cost the business community enormous sums. Unscrupulous firms can also perpetrate white collar crimes by restricting competition through restraining trade and committing antitrust violations. This inflicts damage on the entire business community and ultimately the consuming public.

The government is also a frequent victim of white collar crime through tax and revenue frauds, procurement frauds, and the wrongful exploitation of governmental programs. Governmental entities are being cheated in the collection of taxes which limits services and places additional burdens on the law-abiding public. Procurement frauds cost the government millions of dollars in goods and services. When governmental processes are corrupted and programs are exploited, such situation frequently deprives eligible beneficiaries of services while simultaneously increasing audit costs. On occasion, entire programs have been disabled and in some instances destroyed by this form of criminality (Edelhertz et al., 1977, pp. 12-18).

Occupational vs. Organizational Crime

Marshall Clinard (1983) points out that white collar crime may be occupational or organizational. He describes occupational crime as violations by individuals in connection with their occupations. These criminals appear in occupations ranging from physicians to businessmen and violate the law in a variety of ways. The primary motivation in such cases is financial gain. Clinard believes that insofar as organizations are evaluated by their ability to realize corporate goals, criminal activities that foster the attainment of these goals become more tempting. As the interests of the members of the organization already coincide, employees engage in illegal behavior using their specific skills and the knowledge associated with their specific organizational function to attain corporate ends. Clinard points out that corporate violations, in order to attain organizational goals, often result in enormous economic losses to both the consuming public and the government. He states in part:

> Such illegal practices include price fixing, false advertising claims, the marketing of unsafe products, environmental pollution, political bribery, foreign payoffs, disregard of safety regulations in manufacturing cars and other products, the evasion of taxes, and the falsification of corporate records to hide illicit practices. There have also been injuries (and even deaths) among citizens and employees because of unsafe drugs and other products, pollution and unprotected work conditions (p. 15).

Clinard further states that more than a decade ago, *The Wall Street Journal* reported that various surveys revealed widely held public opinions that prices and profits are excessively high, product quality unsatisfactory, and corporate concern in the welfare of society minimal. Clinard and Yeager (1980) found that two-thirds of the Fortune 500 corporations were charged with violations of corporate law during the period 1975-76. More than half of the charges were for serious violations. One sanction or more was imposed on 321 of the corporations according to the study (pp. 113-122). An article in *U.S. News and World Report* (September 6, 1982) stated that between 1970-80, 115 corporations from the Fortune 500 had been convicted of at least one major crime and had paid civil penalties. Clinard and Yeager (1980, p. 119) found that the larger of these Fortune 500 corporations were the major violators.

In January 1990, *Newsweek* reported that Drexel, Burnham & Lambert, a firm that helped corporate raiders buy out companies through high yield junk bonds, pleaded guilty to felony counts of mail, wire, and securities fraud. Drexel agreed to a $650 million settlement with more than half set aside to compensate aggrieved stockholders and firms. It is estimated that Michael Milliken, the firm's most powerful employee, amassed a personal fortune of between $500 million and $1 billion in connection with his junk bond financing.

In attempting to assess the scope of white collar crime, Bequai (1978) makes reference to a study by the U.S. Department of Commerce placing the annual cost of white collar crime at $30 billion. Another study, by the U.S. Chamber of Commerce, places the cost at over $40 billion annually. Mokhiber (1989) notes an estimate by the Judiciary Subcommittee on Anti-Trust and Monopolies that faulty goods and monopolistic practices cost the public between $175 billion and $231 billion annually. Losses resulting from a fraud perpetrated by a large manufacturer in a conspiracy totaled $100 million dollars. In the 1970's the Lockheed Corporation admitted to illegal foreign payments in excess of $220 million.

It is recognized that it is almost impossible to quantify either the costs of white collar crime by individuals and corporate entities or the extent of victimization. When one factors in the potential for injury or death as a result of white collar violence (in the form of exposure to deadly chemicals, safety hazards, occupational diseases, and other wrongdoings), the costs become staggering. As Coleman (1985, p. 7) points out:

> By virtually any criterion then white collar crime is our most serious crime problem. The economic cost of white collar crime is vastly greater than the economic costs of street crime. And although it may be impossible to determine exactly how many people are killed and injured annually as a result of white collar crimes, the claim that such crimes are harmless, non-violent offenses can hardly be taken seriously. Since only about 20,000 murders are reported to the police in an average year, "non-violent" white collar criminals probably kill considerably more people than all the violent street criminals together.

In assessing the cost of white collar crime, Coleman points out that the Equity Funding swindle alone may have cost the public more than all the street crime in the United States for an entire year. Johnson and Douglas (1978, p. 151) state the biggest robbery in United States history, the 1978 robbery of the Lufthansa Warehouse at Kennedy Airport, netted only

$4 million. During that year the average take for a robbery was $434.

Sanctioning the White Collar Offender

There is a good deal of confusion and a lack of consistency in society's reaction to the white collar offender. As Hagan (1990, p. 409) submits:

> Despite growing pressure for more severity in the treatment of higher occupational and corporate offenders, the likelihood of prosecution and conviction remains small. When offenders are convicted, the penalties remain rather minuscule, considering particularly the economic loss to society. High recidivism rates among such criminals continue. Many are even "dead beats" in paying assessed fines. The "big, dirty secret" remains true: judges and government agencies are "soft" on corporate crime.

Assorted reasons have been offered for the leniency. It must be recognized that a number of acts have not been made illegal until recent years. Consequently, such offenses as false advertising, trademark and patent violations, and restraint of trade, as well as environmental and occupational health and safety violations, were only recently brought into the criminal codes as a result of public pressure for legislation and enforcement. In this regard, public concern is only of recent vintage. Further, white collar crime has been given less media publicity than other forms of criminal behavior. Since white collar criminals fail to fit the stereotype of the criminal, it is difficult to sanction individuals who share the same class and values as those who enforce the law.

It has been suggested that political pressure groups block effective enforcement since these offenders play a significant role in funding campaigns and exert enormous pressure on regulatory agencies and the criminal justice system. Political issues cannot be ignored. It is easier to concentrate attention on the crimes of the lower classes who have little influence in the political arena. The difficulty of detecting sophisticated corporate and organizational violations leads to a lower number of prosecutions, long court delays, and a disproportionate number of first offenders.

Ermann and Lundman (1982, pp. 71-72) make the following observations concerning why it is difficult to punish many corporate offenders:

> The reason why executives are not sanctioned is quite straightforward. As was true of the asbestos decision, there frequently is such a gap between decision and consequence that corporations find it difficult, if not impossible, to sanction executives responsible for long term blunders. Executives who made these decisions are promoted, retired, or dead which makes them invulnerable to corporate penalties. Others therefore pick up the pieces left in the wake of serious mistakes.

In a 1988 study conducted by Wheeler, Mann, and Sarat, extensive interviews were held with Federal judges in seven districts concerning their practices and beliefs in sentencing white collar offenders. The conclusion demonstrated conceptual difficulties in practice based upon the judges' individual interpretations of available information. Thus it was extremely difficult to develop basic agreements on principles into a system of consistent sentencing. The view of the judges revealed an informal common law of sentencing, based upon historical principles of Anglo-American jurisprudence as it relates to the sentencing process.

Benson (1985) determined after an extensive set of interviews with probation personnel and white collar offenders that most officers were of the belief that a probation sanction served little purpose in white collar crimes. The offenders in these cases were believed to have had little difficulty readjusting in the community because of their economic backgrounds and capability to network. Furthermore, the officers were of the belief that the supervision process was meaningless since white collar offenders were unlikely to commit new crimes and did not need assistance reintegrating into the community.

Geis (1985) concludes that corporate white collar offenders are treated relatively leniently by the courts. Additionally, complaints alleging a lack of compliance with occupational safety and health issues are oftentimes dismissed. Geis submits that the most common method of dealing with white collar offenses is usually the imposition of fines and other forms of financial penalties coupled with some type of community service as an alternative to a punitive measure.

Pollack and Smith (1983) determined, after a study of judges in New York City, that judges usually sentence white collar criminals to prison in order to set an example for their peers. They found that sentencing disparity is the result of the following: a lack of a consistent theory of crime causation and punishment, the expectations of the community in which the court is located, the specific characteristics of the sentencing judge, and the pressures of daily court operations. They also found that the judges believed that a shorter sentence to an upper or middle class individual was more punitive than a longer sentence to a common street criminal.

Coleman (1985) notes that the status of white collar criminals, who share a common cultural background with judicial officers and prosecutors, gives them a substantial advantage over lower class offenders. This commonality frequently results in leniency. It is submitted that courts have a greater personal sympathy and compassion for a high status defendant with whom they can identify, than with a lower class defendant. It is speculated that judges understand the circumstances that lead white collar offenders to commit criminal acts but have much less sympathy for the common street thug who lives in a world alien to

judges. Of even greater relevance is the white collar offender's capacity to hire first-rate defense attorneys.

The aforementioned hiring ability becomes apparent when one evaluates the use of the nolo contendere (no contest) plea. The legal consequences of this disposition are tantamount to those of a guilty plea, except that there is no formal admission of guilt, and the plea cannot be used as evidence in civil proceedings. Thus, the nolo plea deprives white collar victims of the benefit of criminal conviction in collateral civil proceedings. It also eliminates the stigma attached to a criminal conviction that often results in civil disabilities.

Clinard and Yeager (1980, pp. 285-286) submit that judges often make a distinction between a plea of nolo contendere and a plea of guilty. Observers charge that often defendants who enter nolo pleas will receive a lighter sentence than those who plead guilty.

In a 1982 study, Wheeler, Weisburd, and Bode discovered that elite defendants charged with white collar offenses were more likely to receive prison sanctions than were lower status offenders. The researchers suggested three possible explanations for this finding: (1) the cases prosecuted were extremely noteworthy and compelling; (2) the judges were appalled by crimes that were perceived as lacking any form of justification and based upon avarice; and (3) the research had taken place immediately after the Watergate scandal which made the judiciary extremely sensitive to upperclass offenders. The study disclosed that antitrust violators were seldom sent to prison, while convictions for tax violations and FCC laws were more likely to result in a penal sanction. Benson (1985) after an extensive set of interviews determined that white collar offenders usually were not ostracized as a result of their conviction. He found that they had the ability to recover their former status within a relatively short time.

In a special report in 1976, the Bureau of National Affairs pointed out the wide sentencing disparity between white collar and other offenders. The study of 307 white collar offenders disclosed that 138 (45 percent) were sentenced. Of these, 37 (26.8 percent) received fines, suspended sentences, or probation even though they had stolen or mismanaged an average of $21.6 million. Defendants in cases involving an average loss of $23.6 million (16.7 percent) were sentenced to an average of a year or less, while defendants involved in cases averaging a loss of $16 million (37.7 percent) received a penal sanction ranging from 1 to 3 years (p. 10).

A 6-month study of white collar offenders in the Southern District of New York determined that they stood a 36 percent chance of going to prison, while defendants convicted of nonviolent common law crimes were sent to prison in 53 percent of the cases. (Orland & Tyler, 1974, pp. 159-160). Geis (1974, p. 390) notes that corporate officials fear imprisonment. Ironically, such sentences are often difficult for the prosecutor to obtain. Judges are not predisposed to send businessmen to prison for trying to make a living while there are felons in the street. On the imposition of sentence a judge commented:

> When I sentence, I sentence based on what I feel are the needs of the individual, and the needs of society based on the conduct of that individual. All people do not need to be sent to prison. For white collar criminals, the mere fact of prosecution, pleading guilty—the psychological trauma of that is punishment enough. They have received the full benefit of punishment (Bureau of National Affairs, p. 11).

Clinard and Yeager (1980, pp. 288-289) point out that when white collar offenders are incarcerated, they are usually sent to low security institutions, often known as country clubs. The justification for this classification is that the white collar offender's physical vulnerability may cause him to be the subject of physical abuse if he were locked up with common criminals. Thus, the penal system has a responsibility to protect these offenders from poor, uneducated street criminals.

Arguments—including that the defendant is contrite, has no prior record, is not perceived as a threat to society, and has been a prominent member of the community active in civic affairs—serve as rationalizations for not incarcerating the white collar offender. Probation, community service, and financial sanctions are common, and most white collar criminals have traditionally run little risk of a lengthy penal sentence for their illegal acts. In support of reducing the sanction, Reynolds (1989, p. 168) makes the following argument:

> White collar crime is largely a diversion from the real crime problem. White collar crime increases the cost of doing business, and thereby cuts down on production and trade, but it is kept within bounds by the efficiency of private enterprise. Much corporate crime is artificial because it occurs due to the expansion of the regulatory state, which seems to have lost any sense of limits to its competence. Disrespect and disregard for law have spread among the general public and among business managers. Tax "avoision" is a consequence of the web of tax rules that has undermined compliance.

In his argument, Reynolds submits that there are 20,000 new bills submitted to Congress yearly, and of these about 1,000 become law. State governments have thousands more, and 10,000 administrative laws are produced yearly by assorted Federal agencies. The Revenue Code has 40,000 pages, and the *Dictionary of 1040 Deductions* for 1982 lists more than 1,800 credits, deductions, and exclusions. The ability to comprehend the code is further exacerbated if one considers the additional exclusions available to corporations, partnerships, estates, and trusts. He believes that the

complexity of the law encourages cheating and erodes compliance, while other unlawful business activities are perceived as debatable crimes (pp. 164-167). Conversely, Conine (1989) states that there is a strong need for deterrence and recommends severe punishment for white collar offenders. Farber (1989) concurs and submits that the fines are too small. He believes that corporations should be placed on probation with the objective of ensuring compliance with the law and establishing effective controls to prevent future crimes.

Lewis (1989) argues that there is unequal justice and differential sentencing. He submits that the white collar offender is working the system by reason of his social advantage. This advantage often causes prosecutors and judges to empathize with his plight:

> Our current system of criminal sentencing blatantly violates this principal of proportionality. At every step in the process the system is geared to vent its fury on the poor, the uneducated and the non-white. The white collar criminal, no matter how substantial or how damaging his actions, will receive easy treatment. This outcome is not accidental. The people who design and administer the system have constructed it so that the criminals most like them will relatively prosper in that system and the criminals least like them will bear its brunt (pp. 178-179).

Mann et al. (1980) conclude that most judges have the perception that the suffering experienced by white collar offenders as a result of apprehension, public indictment, and conviction, coupled with collateral civil disabilities (loss of job, professional licenses, and status in the community), completely satisfies the need to punish. In a study of post-Watergate sentencing in the Southern District of New York, Hagan and Palloni (1986) conclude that persons convicted of white collar crimes after Watergate were more likely to be sentenced to prison. These sentences were, however, for shorter periods of time than were those for less educated persons convicted of common crimes.

Federal Judge Jack Weinstein (1989) takes the position that white collar criminals should be sentenced to a period of house arrest. He argues the need for specific deterrence and selectivity in the selection process in order to exclude offenders who would be considered a danger to the community. The judge believes that such types of sentences would be cost effective. He concludes that by not incarcerating 25 individuals and placing them on house arrest the government would have a net savings of $336,717 per annum (fiscal 1986 penal costs versus probation supervision). Judge Weinstein submits that additional savings would be realized by allowing the offender to continue employment which would prevent members of the family from seeking public assistance. This would also allow him to remain on the tax roles. In support of his position for selective community confinement the judge states:

> More difficult to measure but no less obvious, house detention would prevent the break up of defendants' families and family networks, with consequent psychological and physical disruption that causes trauma to subsequent generations through their wives and children. The defendant's own traumatization in prison will also be avoided. This latter factor over and above the punishment of deprivation of liberty, although not intended by the law's sanction is, unfortunately, a concomitant effect in our prisons today. Imprisonment returns a man to society with a scarred psyche, unpaid debts, and financial losses, a highly disrupted if not irreparably broken family; children who lose respect for their parent; no job, and a gap in his life history that is hard to explain when he seeks a new job (p. 185).

Sentencing Reform Act of 1984

On November I, 1987, the Sentencing Reform Act, operationalized in the form of sentencing guidelines promulgated by the United States Sentencing Commission, became Federal law. The guidelines had the objective of reducing discretion and labeling all Federal sentences under a single coherent framework. The sentencing guidelines were found constitutional after an early challenge (*Mistretta* v. *United States* (109 S. Ct. 647, 102 L. Ed. 2d 714 (1989)).

With the establishment of a Sentencing Commission, offenses were graded, parole abolished, and in this new era of determinite sentencing an emphasis was placed upon the offense rather than the psyche of the criminal. Consequently, such issues as age, education, vocational skills, emotional conditions, and family and community ties were no longer considered to be relevant sentencing issues. The new sentencing statutes do, however, permit the court to depart from specified guideline ranges only when it finds an especially aggravating or mitigating circumstance not adequately taken into consideration by the Sentencing Commission (as mandated in 18 U.S.C section 3553(b)). These departures are subject to appellate review and must meet certain standards.

The *New York Times* (December 17, 1987) made the following observation on judicial discretion when discussing the sentence of Ivan Boesky, who was convicted of insider trading in the Southern District of New York:

> Under the new . . . sentencing procedures for offenses after November 1st, all crimes are reduced to numbers. . . . [O]n the system's scale of sheer heinousness fraud and deceit warrants only 6 of 43 points. But his (Boesky's) crime netted more than $5 million (plus 11), involved more than minimal planning and more than one victim (plus 2), was committed under his supervision (plus 4), and represented the abuse of a position of special skill or trust (plus 2). Still, Mr. Boesky has accepted responsibility (minus 2). A level 23 offense would have automatically earned Mr. Boesky 46 to 57 months in prison without parole . . . but in sentencing nothing can ever be automatic. Under the new system, one can be given unlimited points for cooperating with the prosecution, something Mr. Boesky apparently continues to do.

Boesky was, in fact, sentenced to only a 3-year prison term. In actuality he was released from a halfway house prior to the termination of the sentence.

Smith and Pollack (1991) note that plea bargaining could create significant distortions of the guideline models. This is because prosecutors will be playing a greater role in determining sentences if they begin to stipulate the circumstances that determine the score to be assigned.

On April 27, 1991, the *New York Times* reported that after 3 years of debate, the United States Sentencing Commission unanimously adopted guidelines for sentencing corporations and had submitted its recommendations to the Congress. The lawmakers had 180 days to modify or reject the proposals, and they became law on November 1, 1991. The guidelines were considered to be harsh by business groups who contended that they were unjustified and unfair to those corporations who possess meaningful compliance programs. Fines could exceed hundreds of millions of dollars, but judges would have some flexibility in determining sanctions based upon their assessment of the corporation's attempts to prevent criminality and the extent of senior executive involvement.

In attacking the proposed corporate guidelines Block and Lott contended that the rules are arbitrary with different penalties based on the dollar amount of the crime, corporate size, and the number of employees. They argue that as a result of increased penalties the corporate executive will be forced to spend more time conferring with counsel and monitoring staff which ultimately could result in costs being passed on to the consuming public. Thus, they conclude that in order to ensure compliance and avoid excessive fines, they will ultimately transfer their increased expenses to the consumer.

Conversely, Etzioni points out that the Sentencing Commission was not as severe as required due to corporate lobbying. He states that when the Commission began to assess corporate sentencing, it determined that the average penalty between 1984 and 1987 was a fine of $54,000. He goes on to state that the initial penalties proposed by the Commission in February 1990 were not accepted by corporate America which contended that laws were extraordinarily complex and compliance often impossible because of the myriad of regulations. He suggests that possibly corporate peer pressure may encourage corporate executives to obey the law. He advocates the business community endorsing compliance plans to put its own houses in order with negative publicity and corporate conduct codes as mechanisms for adherence (*New York Times*, sec. 3, p. 13).

At the present time it is too early to assess the impact of sentencing reform upon white collar offenders; however, from all indications, it would appear that many more will be sentenced to penal terms based upon the Federal sentencing grids.

With scant resources allocated for combating white collar crime, and hollow laws that have been ignored or under-enforced in the past, a distorted message may have been transmitted to the public implying a coddling of white collar offenders and toleration of their activities. In discussing the use of consent decrees and restraining orders, Wickman and Whitten (1980) make the following sarcastic observation:

> Corporations that have been involved in polluting the environment sign consent decrees with the EPA and announce they are working on the problem. Imagine the public reaction if a common street criminal were to be dealt with in this fashion. Here is the scene: Joe Thug is apprehended by an alert patrolman after mugging an 85-year-old woman in broad daylight on the streets of Paterson, New Jersey. Brought down to police headquarters, he holds a press conference with the Assistant Police Chief. While not admitting his guilt, he promises not to commit any future muggings and announces he is working on the problem of crime in the streets (p. 367).

Upon analysis, it can be safely concluded that white collar crime is an extremely complex phenomenon, and thus far, academics have been unable to agree upon a typology for this form of deviant behavior. The offenses are diverse, and they are committed by an assortment of individuals for a cornucopia of reasons. Research into the problem has been minimal as the elite offender and corporate America have had the ability to avoid scrutiny into their activities. With increased political commitment in the form of funding for enforcement and legislative reform, and with media exposés, the lawlessness of the privileged will not only be revealed but possibly abated in the future. In spite of these concerted efforts of governmental forces, the prognosis for a positive change is ultimately contingent upon a sincere commitment to a higher standard of business ethics and reevaluation of our value systems.

REFERENCES

American Bar Association. (1976). *Final report of the committee on economic offenses*. Washington, DC: Author.

Bender, D., & Leone, B. (1989). *Crime and criminals: Opposing viewpoints*. San Diego: Greenhaven Press.

Benson, M.L., & Cullen, F.T. (1988). Special sensitivity of white collar offenders to prison. *Journal of Criminal Justice, 16*(3), 297-215.

Bensen, M.L. (1985). White collar offenders under community supervision. *Justice Quarterly, 2*(3), 429-438.

Bequai, A. (1978). *White collar crime*. Lexington, MA: D.C. Heath and Company.

Block, M., & Lott, J. (1991). *Is curbing crime worth the cost. New York Times*, sec. 3, p. 13.

Bureau of National Affairs. (1976). *White collar justice* (a BNA special report on white collar crime). Washington DC: Author.

Clinard, M. (1983). *Corporate ethics and crime*. Beverly Hills: Sage Publications.

Clinard, M., & Yeager, P. (1980). *Corporate crime*. New York: The Free Press Division of Macmillan.

Coleman, J. (1985). *The criminal elite*. New York: St. Martins Press.

Conine, E. (1989). Executives should be punished for white collar crime. In D. Bender & B. Leone (Eds.), *Crime and criminals:*

Opposing viewpoints (pp. 169-172). San Diego: Greenhaven Press.

Corporate crime: The untold story. (1982, September 6). *U.S. News and World Report*, pp. 25-30.

Edelhertz, H. et al. (1977). *The investigation of white collar crime.* Washington, DC: Law Enforcement Assistance Administration, Department of Justice.

Ermann, D., & Lundman, R. (1987). *Corporate and governmental deviance* (3rd ed.). New York: Oxford University Press.

Etzioni, A. (1991, May 6). *A vote for peer pressure. New York Times*, sec. 3, p. 13.

Faber, D. (1989). Companies should be punished for white collar crime. In D. Bender & B. Leone (Eds.), *Crime and criminals: Opposing viewpoints* (pp. 173-176). San Diego: Greenhaven Press.

Friedrichs, D. (1990). *White collar crime: Some provisional resolutions for typological issues.* Paper presented at annual meeting of the American Society of Criminology, Baltimore, Maryland.

Geis, G. (1974). Avocational crime. In D. Glasser (Ed.), *Handbook of criminology.* Chicago: Rand McNally.

Geis, G. (1985). White collar and corporate crimes. In R. Meir (Ed.), *Major forms of crime.* Newbury Park, CA: Sage.

Hagan, J., & Pallone, A. (1986). Club Fed, and the sentencing of white collar offenders before and after Watergate. *Criminology, 24*(4), 603-621.

Hagan F. (1990). *Introduction to criminology* (2nd ed.). Chicago: Nelson Hall.

Johnston, D. (1991, April 29). *Congress gets sentence guide on corporate crime. New York Times*, p. 26.

Johnson, J., & Douglas J. (1978). *Crime at the top.* Philadelphia: Lippincott.

Lewis, E. (1989). White collar criminals should be imprisoned. In D. Bender & B. Leone (Eds.), *Crime and criminals: Opposing viewpoints* (pp. 177-181). San Diego: Greenhaven Press.

Mann, K., Stanton, W., & Sarat, A. (1980). Sentencing the white collar offender. *American Criminal Law Review, 17*, 479-500.

Manson, D. (1986, November). *Tracking offenders white collar crime.* Washington, DC: Bureau of Justice Statistics.

Mokhiber, R. (1989). White collar crime is serious. In D. Bender & B. Leone (Eds.), *Crime and criminals: Opposing viewpoints* (pp. 159-163). San Diego: Greenhaven Press.

New York Times, December 17, 1987.

Orland, L., & Tyler, H. (Eds.). (1974). *Justice in sentencing.* Mineola: Foundation Press.

Quinney, R., & Clinard, M. (1973). Corporate criminal behavior. In R. Quinney & M. Clinard (Eds.), *Criminal behavior systems.* New York: Holt Rinehart and Winston.

Reibstein, L. (1990, December 3). Throwing the book at Milliken. *Newsweek*, p.42.

Reibstein, L., & Friday, C. (1990, January 2). Nailing the junk kings. *Newsweek*, pp. 44-48.

Reynolds, M. (1989). Crime by choice. In D. Bender & B. Leone (Eds.), *Crime and criminals: Opposing viewpoints* (pp. 164-168). San Diego: Greenhaven Press.

Ross, I. (1980, December 1). How lawless are big companies?, *Fortune*, pp. 57-64.

Schrager, L., & Short, J. (1978). Toward a sociology of organizational crime. *Social Problems, 25*, 407-419.

Simon, D., & Eitzen, S. (1982). *Elite deviance.* Boston: Allyn and Bacon.

Smith, A., & Pollack, H. (1991). *Criminal justice: An overview* (3rd ed.). St. Paul: West Publishing Co.

Smith, A., & Pollack, H., White collar street crime sentencing disparity. *Judicature, 67*(4), 174-182.

Sutherland, E. (1940). White collar criminality. *American Sociological Review, 5*, 1-12.

Sutherland, E. (1949). *White collar crime.* New York: Holt, Rinehart and Winston.

Weinstein, J. (1989). White collar criminals should be sentenced to house arrest. In D. Bender & B. Leone (Eds.), *Crime and criminals: Opposing viewpoints* (pp. 182-186). San Diego: Greenhaven Press.

Wheeler, S., Weisburd, D., & Bode. (1982). On sentencing the white collar offender. *American Sociological Review, 47*, 641-659.

Wheeler, S., Mann, Sarat, A. (1988). *Sitting in judgment: The sentencing of white collar criminals.* New Haven: Yale University Press.

Wickman, P., & Whitten, P. (1980). *Criminology perspectives on crime and criminality.* Lexington, MA: D.C. Heath.