

WHITE-COLLAR CRIME

HEARINGS
BEFORE THE
SUBCOMMITTEE ON CRIME
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
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ON
WHITE-COLLAR CRIME

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Thank you, Mr. Chairman.

Mr. CONYERS. Thank you, Mr. Edelhertz, for a very seminal opening statement. We are grateful for the attention that you have given the committee and for your careful preparation.

We have questions, but we are going to ask all three of our witnesses to make presentations, and then we will have discussions with the subcommittee.

I would like, next, to call Prof. Gilbert Geis, professor in the program of social ecology at the University of California at Irvine, co-editor of "White-Collar Crime" and a leading authority on white-collar crime, one who has spent a great number of years in this area and published extensively on this subject. His expertise is well known.

We also appreciate your prepared statement, which will be incorporated in full at this point in the record, and we'll allow you to proceed in your own way.

[The prepared statement of Mr. Geis follows:]

STATEMENT OF GILBERT GEIS, PROFESSOR, PROGRAM IN SOCIAL ECOLOGY,
UNIVERSITY OF CALIFORNIA, IRVINE

Speaking at the 100th anniversary meeting of the Los Angeles Bar Association last month, President Carter used the imprimatur of his office to signify white-collar crime as a paramount social and economic problem. There was unconscious, or perhaps deliberate, irony in the fact that the President's stress on white-collar crime appeared in a speech that primarily was a critique of the legal profession. "We are overlawyered and underrepresented," the President maintained. "No resource of talent and training in our society, not even medical care, is more wastefully or unfairly distributed than legal skills." Later, the President made his points about white-collar crime:

Powerful white-collar criminals cheat consumers of millions of dollars. Public officials who abuse their high rank damage the integrity of our nation in profound and long-lasting ways. But too often these big-shot crooks escape the consequences of their acts. Justice must be blind to rank, power and position.

Had the President chosen to move deeper into delicate territory, at the risk of further aggravating attorneys, he might have pointed out that one of the surest guarantees of unmolested white-collar lawbreaking is the ability to command high-priced legal talent. Such talent can lobby partisan measures into law for corporate clients, can delay trial outcomes, obfuscate issues, and overwhelm government attorneys by pouring huge sums into trials. Members of firms with corporate clients would counterattack, of course, by pointing out that in a democracy everybody, including corporations and professional persons, is entitled to adequate legal services. That the richest get the best is axiomatic. What else is new? Who had ever claimed that justice isn't in part a commodity, able to be purchased, like everything else, in the marketplace?

A tone of urgency was clear in Mr. Carter's Los Angeles speech. "The Justice Department," he announced, "is undertaking a major new effort on white-collar crime." Officials in the Department of Justice charged with prosecuting white-collar crime, however, at a meeting I was attending in Washington shortly after the President's speech, responded with wonderment to his message. They had received no mandate, much less any resources, to deal more effectively with white-collar crime. At the same meeting, officials from the Law Enforcement Assistance Administration announced that funds for research and action projects in the area of white-collar crime would be reduced in the coming fiscal year as part of an overall agency budget cut.

White-collar crime once again was making for fine political populist political rhetoric, but the words were not being translated into public policy. This is traditionally the manner that Americans deal with white-collar crime. It allows those of us who are doing well to castigate lawbreakers who are like us, without threatening them so seriously that it would make us nervous too.

Note, in this regard, the Department of Commerce's recent statement that \$16.3 billion more was paid out by banks in interest and \$2.9 billion more in divi-

depends than was reported by taxpayers to the Internal Revenue Service. The loss to the Government may be close to or exceed the take from those street crimes that arouse so much anger and concern. But the Treasury Department is complacent. It will not beef up enforcement efforts because that could, a Treasury press release observes, "generate taxpayer resentment so great as to jeopardize the very foundation of the entire system of voluntary compliance." The double-speak involved in noting the huge amount of tax fraud, while describing the tax system as one of "voluntary compliance" is ludicrous, though its humor might be lost on burglars and shoplifters, among others. The moral of the Treasury statement is that if enough powerful persons are crooks their potential unhappiness at the polls if they are prosecuted will guarantee them immunity from enforcement efforts.

The difference in official responses to criminal acts of the "haves" in contrast to those of the "have-nots" produces further problems. I believe that the failure of the criminal justice system to mount an effective campaign against street offenders is largely a function of the fact that prosecutors, judges, and the rest of us know too well that a vast amount of criminal activity by middle and upper-class persons is largely ignored. We cannot find the anger to allow us to say of lower-class, largely minority group offenders: "These are the real evil people; they deserve to be punished in order to protect the rest of us, the good people." Most of us are too smart not to know better than that.

We also have trouble really thinking of the successful as the malevolent. Federal prosecutors gathering evidence against Spiro Agnew, when he was Vice President, demonstrated the change in psychological set needed to cauterize deep-rooted feelings about who the "proper" criminals are. Newspaper reporters describing the Agnew investigation display their biases in the quotation below when they indicate that somehow it is worse to send a "respectable" crook than a lower-class crook to jail:

Men under investigation [in the Agnew case] were called "bad men". . . . In a way, the prosecutors employed terms like these to condition themselves for the job at hand—mean, nasty work that often entailed sending a man to jail. It was one thing to dispose of a mugger in that fashion, but quite another thing when it came to men much like themselves—college-educated, middle class, articulate. These were not street people, but men with roots in the community. The humiliation of jail was total and absolute. It destroyed families, careers, and then men themselves.

The major difference between white-collar criminals and the traditional street offenders probably is that the burglar and the robber have more limited means at their disposal for law violation. Members of both groups are dishonest, but the white-collar crook can be more subtle (and more efficient) in his criminal self-aggrandizement. As Neil Shover has noted:

The members of the underclass command so few resources that, when engaging in criminality, they must rely upon stealth, guile or frontal assaults on property to attain their objectives. Not so for elites, whose resources include the bureaucratized labor power of others; elites can, therefore, use bureaucracies as instruments for the perpetuation of their criminal ends. Control over organizations, as resources, thus becomes a kind of functional equivalent of the underclass bandit's pistol.

The use of indirection and manipulation common in white-collar crime can be far more dangerous to the country's integrity than direct forms of criminal activity. Muggings and other street crimes tend to unite a people in moral condemnation of an outsider. Emile Durkheim, a French sociologist, emphasized that such acts may make people behave better by dramatizing what we abhor and by showing what happens to people who behave in such ways. White-collar crime, on the contrary, breeds social malaise. It creates distrust, cynicism, and greed—if others are doing it, I'll get my share too. Street criminals cite self-righteously the derelictions of those in more fortunate positions than themselves. Such considerations led Jonathan Swift to set forth in the land visited by Gulliver a penal policy that punish white-collar offenses more harshly than common thefts:

The Lilliputians look upon fraud as a greater crime than theft, and therefore seldom fail to punish it with death; for they allege that care and vigilance, with a very common understanding, may preserve a man's goods from theft, but honesty has no defense against superior cunning.

It is sometimes maintained that white-collar crime ought not to be regarded seriously because, at its worst, it involves only money, while street offenses can

threaten life and limb. Such a distinction is spurious. Smoggings and muggings are not that distinctive in their lethal consequences. It is quite possible that more people have died from corporate-conducted or corporate-condoned violence—involved in things such as the knowing manufacture of defective cars and private planes—than have been victims of more traditional kinds of murder.

The roster of unnecessary deaths of workers in the asbestos industry documents fatal consequences of white-collar crime. Epidemiological studies indicate that asbestos workers died from lung cancer at unconscionably higher rates than workers in other industries. A union official, fighting for enforcement of tougher industry standards, put the matter bluntly: "I wanted them to know that murder was being committed in the workplace." Paul Brodeur, investigating conditions in factories, often found them a mockery of the assumption that the government would force companies to abide by standards set to insure healthful working conditions. Brodeur has summarized pointedly the bias shown by responses to the heavy death toll among asbestos workers:

I submit that if a million people in the so-called middle or professional class were dying each decade of preventable occupational disease, and if nearly four million were being disabled, there would long ago have been such a hue and cry for remedial action that if Congress had not heeded it vast numbers of its members would have been turned out of office.

For much corporate crime, however, a usual punishment is a consent order in which the accused in essence says: "I didn't do it, but I won't do it again." The Securities and Exchange Commission settles about 90 percent of the 160 or so cases it brings each year with consent decrees. Burglars might wish they had it so good.

There also is a process at work reminiscent of the compensation programs of medieval times. Victims often much prefer to pursue civil suits, where they can recover monetary damages, rather than to press criminal charges, where their gain will be no more than moral satisfaction. Prosecutors are not insensitive to such feelings. Thus, offending corporations can at times literally buy off their victims.

Failure to attend to white-collar crime adequately most certainly is partly rooted in the congruity between offenders and those charged with the crimes prosecution. But the basic explanation seems more complicated. Suzanne Weaver in a recent study of discretion in prosecuting federal antitrust violators found government attorneys intent upon nailing corporate violators. It was not political interference, she came to believe, that kept actual prosecutions low, but rather the inability to construct airtight cases that could go forward successfully.

It proved exceedingly difficult to place responsibility for white-collar crimes. Corporate officials have learned well to rely on verbal communications of nefarious plots rather than to keep written records. We are reluctant to hold a person criminally responsible for an act unless we can show the proper *mens rea*, or guilty intent. We will not accept a parallel to Thomas Aquinas' reasoning that heresy was a sin punishable by criminal action because such a degree of ignorance could only be the product of culpable negligence. I would enthusiastically support the provision of the proposed federal criminal code that organizational officials be regarded as having behaved "recklessly" if they did not put a stop to criminal activities in groups for which they were administratively responsible, when they ought to have known about such crimes if they had acted with reasonable and proper care.

Today, a legal structure largely erected to protect political dissidents and street offenders probably redounds more to the advantage of white-collar criminals than members of either of the two other groups.

Public concern with white-collar crime rarely proceeds beyond a few transient outbursts of indignation. The harm from white-collar offenses tends to be highly diffuse, with losses scattered among many persons, each of whom bears only a very small portion of the total. An orange juice manufacturer can water his product and cheat each of us out of only a few cents a year and reap millions of dollars in criminal profit. We also have become callous about marketplace deception. We expect to be cheated, and feel impotent about protecting ourselves. We know that some auto mechanics, television repairmen, and other tradespeople are routinely ripping us off. We are not surprised to learn from a recent newspaper headline that fraud in federal programs is estimated to be about \$12 billion annually. We have become numbed and overwhelmed, and we don't know what to do about it—so we sometimes try not to seem to care.

We are also puzzled to understand the roots of white-collar crime in a manner that will allow us to control it. We know that it does not stem from broken homes, or Oedipal conflicts, or similar platitudinous explanations offered for traditional offenses.

We know, for instance, that the recent rise in the income of doctors has outpaced the rate for all professions; that the average net earnings of a doctor is now about \$65,000. Yet medical law-breaking seems almost endemic. An early study by Howard Whitman described widespread medical fee-splitting, and newspapers document relentlessly, almost monotonously, criminal practices by doctors. These involve not only financial fraud, but also crimes against the person, such as unwarranted surgery, which reasonably might be defined as assault.

In addition, trepidation in government circles about medical fiscal venery likely has inhibited earlier establishment of a national health service, to the physical detriment of large segments of the population. The United States today lags behind more than a dozen countries in terms of life expectancy and infant mortality, two sensitive indices of national health.

The litany of medical crime—and doctors may well be among the more honest professionals in our midst—can be briefly sampled to make the case more specific. The American College of Surgeons has alleged that half of the operations performed in American hospitals are done by unqualified doctors. A Government lawsuit maintained that the 4,500 doctors who own and work in medical laboratories overcharged the public for tests and conspired illegally to keep everyone but themselves out of the medical laboratory business. In 1970, the IRS reported that about half of the 3,000 doctors who received \$25,000 or more in Medicare or Medicaid payments failed to report a substantial amount of their income. A 1976 study by Cornell University investigators found that from 11 to 13 percent of all surgery in the U.S. is "unnecessary," a function of diagnostic incompetence or greed stemming from a lust for high surgical fees. The Cornell researchers believed that about two million or more operations each year were unwarranted.

A later survey reported that most unnecessary surgery was performed on Medicaid patients. The self-righteousness of violators is reflected in a statement by two New York doctors, who told investigators that government programs "encouraged" them to cheat, since they were not monitored properly. What are the roots of such behavior and such attitudes? Perhaps we dare not look too closely, lest we uncover conclusions too painful and unnerving.

Difficult issues arise in regard to the most effective manner of dealing with convicted white-collar criminals. They probably will not recidivate, in part because they will not be able to secure jobs requiring bonding and other tokens of status. It might be argued that white-collar criminals should not be imprisoned, that the shame they reap is punishment enough. Such an attitude underlies the recent bevy of "creative" sentences imposed by judges on white-collar offenders. Recently, for instance, the Olin Corporation pleaded *nolo contendere* (how many burglars are allowed to plead *nolo contendere*?) to a charge of illegally selling arms to South Africa. For punishment, the corporation was ordered to donate \$510,000 to charity. Olin seemed enthusiastic about the outcome: it could deduct the contributions from its taxes (which it could not have done were it fined), and it would gather a bit of good will as it spread about its largesse.

An argument against imprisoning white-collar crooks is that often they are professional persons, and they may be barred from practicing their vocation, although professional groups, such as bar, medical, and accountants' associations, often seem much more concerned with protecting prerogatives than with disciplining offenders.

I believe that we need to make an example of white-collar criminals in order to deter others and to restore faith in the justice and fairness of the criminal justice system. "Crime in the suites" needs to be treated with the same severity or more severely than "crime in the streets."

I think there is a need for the government to launch a campaign designed to spotlight the horrors of white-collar crime and the inequities rampant in the manner in which we deal with such crime. Such a campaign demands thunder and lightning. The law is a powerful instrument to condition morality, at least within limits, but Solzhenitsyn is correct too when he notes that we in the United States tend to use the fact that we have stayed just within legal boundaries—or that we can make such a case—or that at least they can't prove a contrary case—as a justification for unacceptable behavior. We have got to tighten laws so that ulti-

mately they create a reflexive honesty and compassion, rather than having them represent no more than a catalogue of the most nefarious behavior that might, if uncovered, get their perpetrator into legal trouble.

Offenders must come to know that callous commercial exploitation of their fellow human beings beyond the pale. I appreciate that such a demand smacks of preaching, and that preaching is declass these days: we are all cool and tolerant and cynical. We expect the worst and then cannot be disappointed. We recognize within ourselves those impulses which prompted the acts of the depredators. We see the reformer merely using issues for self-advancement. I think the time is overdue for some old fashioned anger and moralizing in regard to white-collar crime and criminals. They have got to learn that what they have done or are doing is wrong, that it threatens this country's survival in a very real way, and that we will not put up with it. Rationalizations—"everybody does it" is one of the more common—must be penetrated.

I think hearings such as those this committee is holding are essential, because arousal of public concern is a fundamental need if we are going to make inroads against white-collar crime. From this concern must come recommendations and support for remediation. We must create within the government an agency to spotlight and coordinate a campaign against white-collar crime. Centralized statistical reports ought to be issued to demonstrate the extent and nature of such offenses. The media ought to be encouraged to carry stories of white-collar crime where they carry all crime news, and not in the business pages adjacent to the stock reports. Extensive structural changes ought to be made to render corporations more responsible: a federal incorporation law ought to replace the indulgent Delaware code; public representatives ought to find their way onto Boards of Directors; and stockholders ought to be made more vigilant, or to suffer the consequences of heavy criminal penalties against the organization they presumptively partially own.

I believe that white-collar criminals are more culpable than their street counterparts. Having more advantages than other people, they bear more responsibility to establish a good example. This idea of *noblesse oblige* dictates that white-collar criminals do more prison time more often than street offenders for equivalent depredations. White-collar offenders are notably detestable: guilt and shame (at being caught) are qualities that are part of their upbringing.

Whatever the proper approach to white-collar crime, nobody examining the facts can fail to be convinced that the phenomenon requires more attention than it currently receives from the public, the media, criminologists, legislators, and government officials. White-collar crime in every sense is real crime. It has been overlooked and underplayed for far too long.

TESTIMONY OF GILBERT GEIS, PROFESSOR, PROGRAM IN SOCIAL ECOLOGY, UNIVERSITY OF CALIFORNIA, IRVINE, CALIF.

Mr. Geis. Thank you very much, Mr. Chairman.

I am going to abstract some of the material from the prepared statement, to try to highlight some things that I think may be of importance to the subcommittee.

I would like to start by noting that President Carter used the imprimatur of his office to signify white-collar crime as a paramount social and economic problem when he spoke at the 100th anniversary meeting of the Los Angeles Bar Association last month. There was an unconscious—or perhaps deliberate—irony in the fact that the President's stress on white-collar crime appeared in a speech that primarily was a critique of the legal profession: "We are overlawyered and underrepresented," the President maintained. No resource of talent and training in our society, not even medical care, is more wastefully or unfairly distributed than legal skills.

Later, the President was to make his point about white-collar crime, and again, I am quoting:

Powerful white-collar criminals cheat consumers of millions of dollars. Public officials who abuse their high rank damage the integrity of the nation in profound

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