THE CRIMINALOID REVISITED

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The Criminaloid Revisited

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by

Mitchell Lewis Rothman

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ABSTRACT

THE CRIMINALOID REVISITED

Mitchell Lewis Rothman

Yale University

1982

The Criminaloid Revisited studies white-collar crime. Its basic premise is that previous work has been hampered by two crucial limitations--inattention to the details of white-collar illegality, and the use of an inappropriate intellectual framework to describe and analyze results. Breaking with such efforts, it examines the case descriptions of criminal conduct provided in federal presentence investigation reports, going beyond legal categories to develop a typology of white-collar crime based on the underlying behavior of perpetrators and victims, and the social context in which such behavior takes place.

The presentence reports used were a sample of those prepared for defendants convicted of eight presumptively white-collar crimes: antitrust, bank embezzlement, bribery, credit and lending institution fraud, false claims and statements, income tax violations, postal and interstate wire fraud, and securities fraud. The typology recombines the behaviors prosecuted under each of these statutory headings into a classificatory scheme having only four categories.

Fraud involves an intentional misrepresentation or nondisclosure

made in order to fool the victim, acting in reliance. Taking is theft, distinguished from fraud because its victims do not react to false display; something is taken from them, not given to defendants. In collusion, parties who are supposed to be adversaries or at arms length secretly agree to cooperate. Omission involves the refusal or neglect of a duty to perform; the culprit does nothing at all.

In conclusion, the study explores some of the implications of the typology for criminological theory and practice.

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Chapter I

INTRODUCTION

It has been more than forty years since Edwin Sutherland coined the phrase white-collar crime. The expression now appears regularly in the literature of the social sciences here and abroad. It has been translated into foreign languages, and has been used to describe behavior in other economic systems. Its importance is universally recognized. It is even accepted by ordinary men and women in everyday discourse.

But white-collar crime means all things to all people. Used largely for polemical ends, the term has never been consistently defined. The concept has instead served as a residual category, referring to socially harmful acts that are treated more leniently than ordinary crime, or to actors whose behavior remains unexplained by traditional criminological theory. Problems of definition aside, scholars, lawyers, and policy analysts remain unable--or unwilling--to coherently describe what white-collar crime is supposed to represent. A review of the literature leaves one, like James's newborn child, with a sense of only "blooming, buzzing, confusion." Each of the major ideas one encounters is imperfect or remains undeveloped, perhaps because discussion has too often lacked the benefit of hard evidence.

Or a really meaningful way of looking at the subject. I shall argue throughout that these twin problems--inattention to the details of white-collar illegality, and the choice of an inappropriate analytic framework--have hampered our understanding of white-collar crime. Indeed, an entirely new approach is required. The illegal conduct we call white-collar comes to us prepackaged, arriving in boxes already labeled by the legal system; the names we attach to white-collar phenomena, names like mail fraud, embezzlement, securities violation, are assigned according to statutory definitions in judicial codes, not in terms of the actual behavior that forms the content of offenses. This means we study white-collar crime in a largely artificial setting, that we develop and test ideas using a frame of intellectual reference that does not reflect the social reality of our material. For white-collar crime is behavior that occurs in social context; it is human interaction and should be examined as such.

I propose, therefore, to describe white-collar crime in a way that makes sense sociologically, by developing a typology of the criminal behaviors we now term white-collar that focuses on actual behavior, rather than the statutory categories in which such conduct is said to fall. Why a typology? Typologies are an important part of the scientific process. The modern taxonomy of flora and fauna, developed by Linnaeus in the eighteenth century, is a typology; so is Mendeleev's periodic table. In sociology, the use of classificatory schemes dates to the birth of the discipline--Durkheim's work proceeded typologically. Typologies generalize, and generalization beyond the immediate is at the heart of all understanding; abstraction gives meaning to the infinitely varied world of sense data around us. To make experience intelligible, we think of singular events as uniform and recurrent; we eliminate what is unique in order to grasp the repetitive and interrelated. Whether we construct social reality as participants in the everyday, or as observers at one remove, classification is essential to comprehension (Schutz, 1954). Its power was recognized by a leading economist and philosopher of science a century ago:

> The result of...classification is to yield generalised knowledge, as distinguished from the direct and sensuous knowledge of particular facts....The facilitation and abbreviation of mental labour is at the bottom of all mental progress. The reasoning faculties of Newton were not different in nature from those of a ploughman; the difference lay in the extent to which they were exerted, and the number of facts which could be treated. Every thinking being generalises more or less, but it is the depth and extent of his generalisations which distinguish the philosopher....it is the exertion of the classifying and generalising powers which enables the intellect of man to cope in some degree with the infinite number of natural phenomena (Jevons, 1877:674).

According to McKinney (1966:10), one may take either of two approaches to classification. The first is holistic and inductive; generic resemblance is identified at the expense of differing particulars. The other is deliberate and pragmatic--resemblance is defined in terms of certain common qualities which are themselves selected according to one's precise theoretical interest. I choose the former. Since the last century, when Mayhew, Moreau, and Lombroso wrote, criminologists have advanced countless typologies, each from a different perspective. It was always hoped, of course, this profusion would lead to greater understanding. Instead, we have inherited a hodgepodge of unrelated, often contradictory, taxonomic designs. Is this because so many of these typologies were developed with a special purpose in mind? In a field lacking general agreement as to what is important, everyone has gone in their own direction.

No grand solution to this state of affairs appears in these pages. My suggestion is really quite modest--that we get as close to actual behavior as possible, describing and classifying criminal activity in terms of what each actor does. After all, as social scientists or practicing lawyers, we seek to understand, predict, and control human behavior. Why not classify behavior, then, before concerning ourselves with psychological traits, social background, peer group support, societal reaction, sociocultural context, or any of the other bases on which typologies have been erected in the past?

Let us therefore develop what Hempel (1965:156) termed a "classificatory" typology of white-collar crime. Such a typology categorizes along natural lines, on the basis of empirical observation. To be sure, there are problems with this approach. Because they have not been defined initially in light of a particular theory, resultant types are not logically interrelated. More important, such efforts tend to focus on relatively concrete characteristics--those most amenable to reliable observation--and are necessarily limited by the breadth and quality of available data.

That a typology does not proceed from theory is perhaps an advantage in a field where theories have proliferated in the absence of hard evidence. Similarly, concern for attributes that can be easily observed is appropriate when abstract concepts have produced more heat than light. Information quality is always critical, and at a number of points below, I shall be concerned with the limitations of the materials I work with. But an even more pressing issue must be faced at once.

Why try to develop a new classificatory scheme whose boundaries intersect statutory lines? Don't legal categories get close to real-world behavior? Of course, to some extent, they do. Yet many who have worked with legal categories have found them lacking.

Classification according to legal definition is quite common. In fact, statutory categories are probably the oldest means of classifying criminal behavior and actors that we know. Offenders have been labeled murderers or arsonists, embezzlers or burglars, since time immemorial. This practice continues today, both in the popular media and social science literature. The FBI's Uniform Crime Reports, for example, refer to violations of law as they have been defined in the penal code. But whether individuals or their activities are being classified, categorization on the basis of statutory offense runs into a number of difficulties. First, there is frequently a significant difference between the misdeed one is convicted for and the crime one actually commits. Prosecutorial discretion in charging and plea bargaining means that category of conviction may only vaguely resemble original offense. Second, because legal definitions vary over time and place, comparative analysis is problematic. Differences in the perception or processing of deviant behavior may thus be masked. Finally, even when time and place are constant, statutory categories may not comprehend homogeneous units of behavior. Why is this so?

Several factors combine to prevent the legislative creation of mutually exclusive penal categories which consistently distinguish unlike activities. Whether legislatures move on their own initiative, or are mobilized by outside interest groups, their stance is essentially reactive--new laws are passed in response to perceived social problems. The task is to address legislation to specific forms of conduct--to "clean up" a particular industry, to protect a special set of potential victims, to defend against a new form of criminal organization--not to maintain a logically coherent penal code. There is no guarantee prohibitions will fit together neatly as they accumulate over time.

> The legislatures or commissions which draft criminal codes are rarely omniscient. Their work is transmitted from one generation to another in piecemeal fashion, always with the prospect that the next generation will add handsomely to the statutes--quite often without bothering to weed out obsolete ones or to harmonize the old with the new (Kirchheimer, 1949:515-516).

Even when this process of historical accretion is arrested momentarily by codification, statutory categories may nevertheless reflect the accidents of their birth. Hall's (1952) review of the emergence in the eighteenth century of several differentiated crimes of theft from the charge of simple larceny, as Parliament and the judiciary reacted to social change by creating more precisely targeted crime categories, is on point. Basic divisions within the modern law of theft still give clear evidence of that evolution.

A related problem also exists. Though aimed at specific forms of behavior, legislation may be more concerned with problems of proof and jurisdiction, the definition of requisite mental states, and the like, than with conduct more generically described. Matters of technical legal import, rather than elements of behavior themselves, may determine how activity is categorized. Criminal statutes are drafted by professionals to meet important jurisprudential goals, but discrimination on the basis of legally-relevant characteristics again leaves open the possibility that a single act will fit into more than one offense category.

Given these objections to the use of legal subdivisions, it is not surprising that authors in both law and sociology have sought alternative taxonomic devices. Hall talked about "theft," rather than embezzlement, larceny, larceny by trick, obtaining property by false pretenses, or receiving stolen property. In the same general area, Cressey (1951, 1953) was forced to develop the notion of "the criminal violation of financial trust" to deal with individuals convicted of embezzlement and related crimes. Though he first used "embezzlement" to define the behavior he wanted to study, it soon became clear to Cressey that "the legal category did not describe a homogeneous class of criminal behavior" (1953:19). Indeed, Cressey found, because "embezzlement" was such a vague concept, "there has been practically no progress toward the cumulative development of a theoretical explanation of the type of behavior which embezzlement entails, and even the factual conclusions of empirical studies are not immediately comparable in all respects" (1953:168,fn.2). Persons who embezzled were occasionally imprisoned for other offenses, and not all those sanctioned for embezzlement were actually guilty of such conduct. "Obtaining money by means of a confidence game," a related charge, also covered many quite different illegal activites. And some forgery cases looked more like embezzlement than forgery.

Reckless (1961:75) has joined Cressey in calling for sociologically homogeneous units of analysis, noting that statutory definitions do not mark off uniform classes in any but a legal or technical sense. Kitsuse and Cicourel (1963), citing comments offered by Robert Merton at a symposium on juvenile delinquency (Witmer and Kotinsky, 1956:31), have remarked on this, too. All draw upon Znaniecki (1928) and Sellin's (1938) original statements of the position. Demand for policy relevance, the apparent rigor of legal definitions, and the ready availability of data framed in terms of statutory categories, combined to fix "the artificial boundaries of crime" (1938:20), according to Sellin; he called instead for delimiting concepts that arose "intrinsically" from the nature of his discipline's subject matter.

> If psychiatry had confined itself to the study of persons declared legally incompetent by criminal courts, it would no doubt have learned something about mental disease, but if courts had defined and thus classified various forms of mental diseases for reasons to be sought in public policy, the psychiatrist would have learned little indeed....Acceptance of the categories of specific forms of 'crime' and 'criminal' as laid down in law renders criminological research theoretically invalid from the point of view of science. The data of the criminal law and the data about crimes and criminals now subservient to legal categories must be 'processed' by the scientist before he can use them (1938:24-25).

Thus, while groupings in sociological taxonomies often approximate legal categories, because the law necessarily focuses on the criminal act, and although legal definitions are, in general, much more precise than their sociological counterparts, if one wishes to work with homogeneous units of behavior, one must develop sociologically relevant typological constructs.

But how is this to be done? In developing a classificatory typology, even one based on "intrinsic" delimiting criteria, we necessarily discard a great deal; much potentially valuable information is lost when the unusual or extraneous is ignored. The choice of classificatory standards is obviously critical. Lazarsfeld and Barton have stated the problem clearly:

> Before we can investigate the presence or absence of some attribute in a person or social situation, or before we can rank objects or measure them in terms of some variable, we must form the concept of that variable. Looking at the material before us in all its richness of sense-data, we must decide what attributes of the concrete items we wish to observe and measure: do we want to study "this-ness" or "that-ness," or some other "-ness"? The precise origin of our notion of this-ness or that-ness may be extremely varied, but it usually seems to involve combining many particular experiences into a category which promises greater understanding and control of events (1951:155-156).

If white-collar crime is interaction, then categories which afford "greater understanding and control of events" should be defined in terms of such interaction. The instant typology will for that reason focus on the interaction of perpetrators and victims. But what sort of "sense-data" will we employ? Ones rich enough to provide all the details of that behavior. Borrowing a phrase used by Clifford Geertz in a somewhat different context, classification must be based on the "thick description" of white-collar events (1973:6), the in-depth study of offenses and surrounding circumstances in full detail. A typology erected on that kind of foundation is the most appropriate framework for understanding the nature of white-collar misbehavior.

Consideration of rich factual evidence will bring additional advantages. The issue of classification aside, problems in the literature on white-collar crime that today perplex may be illuminated by careful attention to real world cases. Questions of definition and conceptual utility may be answered, other difficulties resolved, as we analyze white-collar crime in a new, more meaningful fashion. What's so remarkable about white-collar crime? Is it wise to assign a catchy label to a particular species of criminal behavior? Is there some subset of illicit conduct within the universe of white-collar crime that deserves our special attention? These are issues that have never been resolved; perhaps it is time to approach them with a sociologically informed analysis of detailed case materials.

I begin with a brief history of the white-collar crime concept in American sociology, showing how little agreement there has been on basic matters of definition. This accomplished, the literature's primary themes are each discussed in greater detail, and the general problem restated in terms of that literature's shortcomings. The following chapter talks specifically about method and materials; the typology itself unfolds in the next three. In conclusion, I look back at some of the issues raised along the way, exploring the implications of my work for criminological theory and practice.

THE HISTORY OF AN IDEA

"White-collar crime" has been used most frequently to describe conduct of apparently reputable individuals or organizations that is nonviolent, economically-motivated, and illegal. The term will be employed in the same, rather loose, sense throughout this essay--to point generally to crime whose immediate purpose is financial and which does not involve violence or the threat of physical harm to persons or property, especially when such activity is carried out by the socially accepted. Of course, such behavior predates Sutherland considerably.

References to corruption and fraud among the respected and powerful are nearly as old as the printed word. I pick up the story at the turn of the century, when persons we might today identify as sociologists began paying attention to the subject.

The literature's most persistent theme--the abuse of economic and political power by unchecked corporate interests--grows out of the muckraking tradition. Henry Demarest Lloyd, Frank Norris, Ida Tarbell, Lincoln Steffens, and Upton Sinclair wrote for a mass audience; Edward Alsworth Ross's Sin and Society (1907), academic sociology's first look at what we now label white-collar crime, reflected the same concerns. In prose that, alas, has since not been equaled, Ross introduced ideas that reappear constantly--without attribution.[1] The respectability and elevated status of the "criminaloid," that upperworld character who, "conscious of the antipodal difference between doing wrong and getting it done...places out his dirty work" (1907:51), and thus escapes

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[1] It is more generous to say merely that Ross's style was unique:

> The man who picks pockets with a railway rebate, murders with an adulterant instead of a bludgeon, burglarizes with a "rake-off" instead of a jimmy, cheats with a company prospectus instead of a deck of cards, or scuttles his town instead of his ship, does not feel on his brow the brand of a malefactor. The shedder of blood, the oppressor of the widow and the fatherless, long ago became odious, but latter-day treacheries fly no skull-and-crossbones flag at the masthead (1907:7).
>
> A differentiated society abounds in closed doors and curtained recesses. The murmers of the alley do not penetrate to the boulevard. The shrieks from the blazing excursion steamer do not invade the distant yacht of her owners. If the curses of the tricked depositors never rise to the circles of 'high finance' that keep the conscience of the savings-bank wrecker, why should the popular hiss stay the commercial buccaneer? (1907:18)

censure, the lenient treatment of these persons by the state, the public's apparent indifference to the criminaloid's excesses, the use of complex organization to carry out and legitimate criminal conduct, the numerous and ever more serious breaches of trust made possible by increasing societal differentiation, the physical and social separation of wrongdoer and victim, the fact that victims of "modern sin" are often difficult to identify and unaware of their plight--all are discussed in Sin and Society.

Ross vilified bank wreckers, stock manipulators, tax dodgers, monopolists, and speculators of all stripe. But he was more interested in social organization than individual causation. The early criminologists, who did work at the individual level, were almost entirely concerned with the relationship of poverty, personal pathology, and crime, and thus paid scant attention to the misdeeds of the upper class. There are a few exceptions, however.

Charles Buckman Goring, an English psychiatrist and philosopher associated with the biological school, gathered data on more than 3000 convicts and announced in 1913 that most frauds were committed by members of the middle and upper classes. He concluded that social inequality could not explain all criminal behavior (Driver, 1960). William Bonger's Criminality and Economic Conditions (1916) contains a brief section on the economic crimes of the bourgeoisie (1916:599-607). Even here, Bonger's theme--that the inequities of capitalism forced the poor into lives of crime--led him to emphasize the role of business failure in such offenses.[2] Raffaele Garofalo's contribution is more substantial (Garofalo, 1914). Writing in response to socialists like Bonger, Garofalo argued that criminal activity did not depend on social class. With statistics from Italy, France, and Germany, he demonstrated that the proportion of known crimes committed by each class was equal to the proportion of that class's size to the total population. Garofalo reasoned that "the criminal impulses" were "equally potent" across the social spectrum:

> It is true that theft, the crudest form of attack on property, is much more prevalent among the lower classes, but this fact is counterbalanced by the embezzlments, forgeries, and criminal bankruptcies of the higher classes....Common speech, which translates the public conscience much better than do the terms of the law, has a single name for all offenders of this description. No less to the vagabond who steals a watch, it applies the word "thief" to the cashier who absconds with the funds entrusted to his care, the merchant guilty of fraudulent bankruptcy, or the public officer who allows himself to be bribed. In a different class of society, the man who is guilty of petty theft would have been a fraudulent promoter, a defaulting bank-teller, or a lawyer who embezzles his client's money (1914:149).

Ross, Garofalo, and the others had no immediate successors. The war years and the twenties saw no new work on corporate or upper class misbehavior. But the economic collapse of 1929 quickly rekindled interest. Four years into the Depression, a symposium on "mercenary crime" produced a volume on the causes, consequences, and prevention of

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[2] Bonger noted that very few bourgeois crimes were prosecuted; even when prosecution was successful, penalties did not reflect the very serious consequences of such acts and, in fact, were much lighter than those inflicted on the poor who dared commit crimes against property. Similar observations have appeared frequently enough since Bonger's time. For the most recent consideration of the effect of social class on the sentencing of white-collar offenders, see Wheeler, et al., (1982).

"the whole catalogue of crimes deliberately committed for illicit gain, in the upper-world as well as in the under-world" (MacDougall, 1933; quote at iii). This "catalogue" included many latter-day white-collar offenses, such as stock and bank fraud, consumer swindles, unfair competition, commercial bribery, and political corruption. One year after that, Albert Morris's Criminology (1934) devoted several pages to the exploits of "upperworld" criminals, those "whose social position, intelligence, and criminal technique permits them to move among their fellow-victims virtually immune to recognition and prosecution" (1934:153).[3] Like Ross--and Sutherland a few years later--Morris insisted these individuals were really criminals, whether or not they were so branded.

The thirties were a time of disenchantment and reconsideration for many. Phrases like "mercenary" and "upperworld" crime commanded more than academic interest during a period of unprecedented economic hardship. Congressional revelations regarding the impact of securities fraud (Pecora, 1939) and the collapse of financial empires as large as Ivar Kreuger's (Churchill, 1957) competed for headline space. Matthew Josephson's The Robber Barons (1934) described for millions the aggressive, sometimes lawless men who rose to economic and political supremacy after the Civil War. "In important crises, nearly all of them tended to act without those established moral principles which fixed more or less the conduct of the common people of the community"

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[3] Morris's enumeration of upperworld crimes was remarkably prescient. It included the exploitation of native populations by multinational corporations (1934:155) and civil rights violations (1934:156).

(1934:vii). Books more sensational than Josephson's on fraud, corruption, and racketeering in high places appeared as well.[4] In many respects, then, Sutherland's presidential address to the American Sociological Society in December 1939 was a child of its time.

Sutherland had already referred to "white-collar criminaloids" in the second and third editions of his Principles of Criminology, in 1934 and 1939.[5] But the presidential address, published the following year (Sutherland, 1940), represented his first full presentation on the subject. Restatements appeared in two subsequent articles (Sutherland, 1941, 1945), another speech, published posthumously (Sutherland, 1948), an encyclopedia entry (Sutherland, 1949b), and the author's White-Collar Crime (1949a). The entire body of work deserves careful consideration.

Like Ross, Sutherland wrote primarily of corporate wrongdoing. Unlike his predecessor, however, Sutherland was not principally intent on reforming society; by emphasizing the offender's social status, he meant only to challenge those of his contemporaries who thought crime the result of poverty and related social ills.[6] For an academic whose

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[4] Morris (1949) lists 14 "representative" works published during the decade.

[5] Here, Sutherland cited Ross. Pages 32 through 38 of the 1934 edition treated of fraud, embezzlement, tax evasion, and bribery; the discussion emphasized individual rather than organizational conduct. Pages 36 through 43 of the third edition presented substantially the same material.

[6] Vold (1958:259) suggests that Sutherland's attempt to reform criminological theory was really a plea for a broader reformation of business and cultural mores. Noting Snodgrass's (1972) conclusion that Sutherland was more an "old-time prophet" than a radical, Geis (1974:287), too, calls him a "muckraker." Klockars (1977) agrees.

immediate concern was the shape of his discipline, Sutherland was remarkably loose when it came to definitions. Indeed, Sutherland claimed the definition of white-collar crime did not have to be very precise, given his purpose (1941:112).

The presidential address never actually said what white-collar crime was. Citing the robber barons as examples of what he meant, Sutherland instead provided a roster of the most common forms of white-collar criminality in business:

> Misrepresentation in financial statements of corporations, manipulation in the stock exchange, commercial bribery, bribery of public officials directly or indirectly in order to secure more favorable contracts and legislation, misrepresentation in advertising and salesmanship, embezzlement and misapplication of funds, short weights and measures and misgrading of commodities, tax frauds, misapplication of funds in receiverships and bankruptcies (1940:2-3).

A list of white-collar delicts among doctors was also offered, perhaps to make clear that the concept applied to the professions, as well.[7] Sutherland tried to tie things together, noting these varied activities generally involved the "violation of delegated or implied trust" (1940:3), but he spent most of his time arguing that white-collar crime was prevalent, socially destructive and, indeed, was "real" crime.[8]

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[7] These included "illegal sale of alcohol and narcotics, abortion, illegal services to underworld criminals, fraudulent reports and testimony in accident cases, extreme cases of unnecessary treatment, false specialists, restriction of competition, and fee-splitting" (1940:3). This list was to be repeated in White-Collar Crime (1949a:12), as was Sutherland's observation that the medical profession probably witnessed fewer such misdeeds than other callings including, most notably, the law.

[8] This is also true of his other writing. If Sutherland's work on the subject has any single theme, it is that white-collar illegality, however defined, is recurrent, costly, and deserving of

Sutherland offered his first definition of white-collar crime a year later. In "Crime and Business," he announced that a white-collar crime was

> a violation of the criminal law by a person of the upper socioeconomic class in the course of his occupational activities (1941:112).

This stood alone until 1949, when two new definitions appeared. One, in the Encyclopedia of Criminology, focuses on actor rather than act, and seems significantly narrower:

> The white-collar criminal is defined as a person with high socioeconomic status who violates the laws designed to regulate his occupational activities (1949b:511).

The other, in White-Collar Crime, hews more closely to the original, and is today the definition most widely quoted:

> White-collar crime may be defined approximately as a crime committed by a person of respectability and high social status in the course of his occupation (1949a:9).

Sutherland's cavalier approach to the problem of definition has been remarked on many times. Given his purpose, perhaps his difficulty in this regard is not too critical; after all, the lynchpin of Sutherland's argument, high social status, remains relatively constant throughout. Or does it? The matter is much less clear on closer inspection.

In 1939, Sutherland stated:

> Perhaps it should be repeated that "white-collar" (upper) and "lower" classes merely designate persons of high and low socioeconomic status. Income and amount of money involved in the crime are not the sole criteria. Many persons of "high" socioeconomic status are "white-collar" criminals in the sense that they are well-dressed, well-educated, and have

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criminologists' immediate attention.

> high incomes, but "white-collar" as used in this paper means "respected," "socially accepted and approved," "looked up to." Some people in this class may not be well-dressed or well-educated, nor have high incomes, although the "upper" usually exceed the "lower" classes in these respects as well as in social status (1940:4,fn.2).

In his DePauw University speech in 1948, he was less elaborate:

> The term white-collar is used in the sense in which it was used by President Sloan of General Motors, who wrote a book entitled The Autobiography of a White-Collar Worker. The term is used more generally to refer to the wage-earning class which wears good clothes at work, such as clerks in stores (1948:79).

In White-Collar Crime this became:

> The term white-collar is used here to refer principally to business managers and executives, in the sense in which it was used by a president of General Motors who wrote An Autobiography of a White-Collar Worker (1949a:9).[9]

To complicate matters even further, Sutherland continued by discussing, almost in the same breath, the robber barons (again) and the 1941 Reader's Digest survey of fraudulent repair practices among garage owners and other small tradesmen.

Sutherland's treatment of the relationship between breach of trust and white-collar crime is more of a piece. Explaining that white-collar crime often involved the violation of a trust relationship, Sutherland told his audience in 1939:

> The financial loss from white-collar crime, great as it is, is less important than the damage to social relations. White-collar crimes violate trust and therefore create distrust; this lowers social morale and produces social disorganization. Many of the white-collar crimes attack the fundamental principles of the American institutions. Ordinary crimes, on the other hand, produce little effect on social institutions or social organization (1940:5).

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[9] In fact, the title of Sloan's book was Adventures of a White-Collar Man! (Geis, 1974:284).

The same point was made in White-Collar Crime (1949a:13).[10] Indeed, although Sutherland stated again that trust infringement was not a "universal" characteristic of white-collar crime (1941:112), this link between violation of trust and white-collar crime is a recurring theme that lends his work a degree of continuity it might otherwise lack.

Almost as uniform was Sutherland's attention to corporate crime. While he made references to other kinds of economic crime, Sutherland wrote most frequently about business misdeeds. His analysis of the offenses committed by seventy of the nation's industrial giants, presented completely in White-Collar Crime, informs all his work, and perhaps led his leading student to suggest that Sutherland paid too much attention to corporate illegality.[11]

* * *

Although it failed to define white-collar crime to anyone's satisfaction, Sutherland's work defined the field. Virtually everything that has appeared since has been shaped by Sutherland's contribution. The elements of his most famous definition, social status, respectability, and occupation, his notion that the breach of trust characterized nearly all white-collar crime, and his preoccupation with corporate excess, have supplied the basic themes of every major reconsideration of white-collar crime since his death.[12]

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[10] Beginning with "This financial loss" the quoted material was repeated verbatim.

[11] See Cressey (1965) and footnote 15, infra.

[12] Thus, for example, the literature on violations of public trust, which Sutherland almost totally ignored, has developed, in large

At first, disagreement regarding the criminal status of white-collar conduct accounted for much of the ink spilled on the subject.[13] Of the few empirical studies done, the most influential adhered to Sutherland's requirement that illegal activity be related to one's occupation. Clinard's research on black market violations during World War II (Clinard, 1946, 1952) and Hartung's consideration of similar offenses in Detroit's wholesale meat industry (Hartung, 1950) guided developments in the field for fifteen years; works such as Ball's 1952 study of rent control offenses in Honolulu (Ball, 1960), Becker's examination of the abuse of unemployment compensation programs (Becker, 1953), and Groves's investigation of income tax compliance (Groves, 1959) were relatively overlooked.

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part, independently of other writing on white-collar illegality; the latter has focused on crime committed by economic actors and the infringement of private trust relationships, perhaps because of Sutherland's emphasis on status and the criminal role of big business.

[13] Sutherland's leading critics made a number of related points. Tappan (1947) contended that persons were criminals only if they were so adjudicated by the courts. "(The white-collar criminal) may be a boor, a sinner, a moral leper, or the devil incarnate, but he does not become a criminal through sociological name-calling unless a politically constituted authority says he is" (1947:101). Burgess (1950) emphasized public disapproval and the offender's self-concept. "A criminal is a person who regards himself as a criminal and is so regarded by society" (1950:34).

The "is it crime" controversy retains merely historical interest today. Students either accept the view that white-collar violations include all behavior that is punishable, whether at criminal law or by civil or administrative remedy, or recognize the wisdom of Aubert's words:

> For purposes of theoretical analysis it is of prime

Clinard and Hartung studied the crimes of businessmen. Both urged that white-collar crime be explicitly limited to such conduct. For Clinard, the concept meant only "illegal activities among business and professional men" (1952:viii), but Hartung called white-collar crime "a violation of law regulating business, which is committed for a firm by the firm or its agents in the conduct of its business" (1950:25). Hartung thus substituted the business activity of organizations for the occupational activity of individuals. This represents an important shift from Sutherland's original position. While several of his articles (most notably 1941, 1948) and his book reflect his interest in corporate deviance, Sutherland's treatment of these materials as well as the rest of his output make quite clear that, for Sutherland, white-collar criminality included both individual and organizational behavior.[14]

Either Clinard or Hartung would have ruled Donald Cressey's Other People's Money (1953) out of bounds. Cressey ruled himself out of bounds for social status reasons. Using the definition found in Sutherland's book, Cressey admitted that relatively few of the convicted embezzlers he interviewed were white-collar criminals:

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importance to develop and apply concepts which preserve and emphasize the ambiguous nature of white-collar crimes and not to "solve" the problem by classifying them as either "crimes" or "not crimes." Their controversial nature is exactly what makes them so interesting from a sociological point of view and what gives us a clue to important norm conflicts, clashing group interests, and maybe incipient social change (1952:266).

[14] In fact, Sutherland was later taken to task for not distinguishing more precisely between corporate behavior and the conduct of individuals within corporations (Geis, 1962).

> The significant characteristic of white-collar crime is that it is not associated with poverty or with social or personal pathologies which accompany poverty. While the crimes of trust violators are committed in the course of their occupations, many of the violators encountered cannot be considered as persons of high social status or as respected persons of the community. While, with a few exceptions, the persons interviewed were in no sense poverty stricken, holding positions which at least provided them with a regular income, neither can they be considered as persons of high social status in the sense that Sutherland uses the phrase (1953:184,fn.9).[15]

Organizational involvement has been part of the white-collar crime concept since Ross, but Hartung's requirement that white-collar crime be organizational was not immediately accepted. The next conceptual sea change instead dropped Sutherland's social status criterion. Clinard had planted the seeds very early on, including gas station operators and all who rented property in his study of the black market, but little was made of this until Newman (1958) suggested that farmers, repairmen, and others from lower rungs of the social ladder could be thought of as white-collar criminals (this, though he quoted Sutherland's 1949a definition approvingly). "The chief criterion for a crime to be 'white-collar' is that it occurs as part of, or a deviation from, the violator's occupational role" (1958:737). It remained for Quinney (1964), who had written an influential piece on prescription violations among retail pharmacists (Quinney, 1963), to formally propose that white-collar crime include "all violations that occur in

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[15] The organizational behavior perspective was influential enough by 1965, however, for Cressey to feel compelled to offer an entirely different opinion of his work. He studied embezzlers, he explained, because Sutherland's position had been "confused"; the Indiana sociologist had examined corporate behavior, not that of individuals, and another view of white-collar crime was required (Cressey, 1965).

the course of occupational activity" (1964:210), and that it be renamed "occupational crime." Although Clinard retained the social status requirement in his definition of white-collar crime for the International Encyclopedia of the Social Sciences,[16] a textbook he and Quinney co-authored (1967, 1973) replaced the by-then obligatory chapter on white-collar offenses[17] with one titled "occupational crime."[18] Others in the early seventies also spoke in terms of occupational conduct at all status levels (Gibbons, 1968; Meyer, 1972; Geis, 1974 on "avocational" crime) or used the concept in empirical research (Leonard and Weber, 1970).

Clinard and Quinney added the requirement that one's job be legitimate to Quinney's broader notion of occupational crime. The idea that one hold a position in the legitimate economic order has appeared in subsequent work, too, most often to distinguish white-collar from organized crime (Clarke, 1978; Reiss and Biderman, 1980). Though it is not entirely clear how the concept differs from Sutherland's "respectability" criterion, the appearance of "legitimacy" in the late

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[16] "The concept of white-collar crime covers law breaking among the middle and upper (or 'white-collar') socioeconomic classes" (Clinard, 1968:483).
Mannheim (1965) limited consideration to the offenses of "non-working-class" persons, too.

[17] Standard criminology texts began to devote considerable space to white-collar crime by the late fifties. For an earlier, perhaps atypical treatment, see Barnes and Teeters (1943).

[18] The first edition defined the concept as "violation of the legal codes in the course of activity in a legitimate occupation" (Clinard and Quinney, 1967:131). Six years later, "the legal codes" became "the criminal law," a shift seemingly at odds with the authors' statement that occupational crimes were not, in general, punished criminally.

sixties does represent a new development in the field.

As social status dropped from sight, and legitimate occupation took its place, discussion of organizational crime continued apace. Perhaps influenced by his study of the heavy electrical equipment antitrust cases of 1961, Gilbert Geis urged that "the concept of white-collar crime be restricted to corporate violations of a reasonably homogeneous nature and to cognate criminal acts" (1962:171). The same year, Bloch and Geis (1962) offered one of the first typologies of white-collar crime, distinguishing crimes committed by individuals, by employees against a corporate employer, and by corporate policy-makers acting on behalf of their organization. The first two became one as Clinard and Quinney (1973) published chapters on occupational and corporate crime, and Geis (1974) wrote of avocational and corporate offenses; in both cases, the two remaining categories were meant to describe the universe of white-collar illegality entirely (see also Gibbons, 1968; Horning, 1970).

This focus on corporate behavior was to become even more intense as the seventies progressed. Before this occurred, however, Herbert Edelhertz added to the field with his work on the classification of white-collar offenses (Edelhertz, 1970). Although calls for the analysis and categorization of white-collar behaviors had been made previously, Edelhertz's was the first major effort in this direction.

Edelhertz's typology will be considered below. His definition of white-collar crime is important, too, for it departs significantly from earlier efforts. According to Edelhertz, white-collar crime is "an illegal act or series of illegal acts committed by nonphysical means and by concealment or guile, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage" (1970:3). Behavior and motive thus replace social context; status, perceived legitimacy, occupation, and organization are no longer relevant. The definition won a good deal of notice, its focus on behavioral content rather than social structure setting it apart from previous treatments. That Edelhertz was chief of the fraud section in the Department of Justice's Criminal Division is perhaps germane, for his definition seems more attuned to the white-collar offenses typically prosecuted in the federal courts than to those handled in civil or administrative proceedings; it is not surprising, too, that a prosecuting attorney emphasized behavior instead of more theoretical sociological concepts.[19] Edelhertz's list of representative white-collar crimes (1970:73-75) reflects this; relatively unorganized fraud, financial manipulation, and collusion predominate.

Just as the Great Depression revived academic interest in the sins of the powerful, the combined experience of Vietnam, the Nader and environmental movements, and Watergate animated scholarship on white-collar crime. Corporate misbehavior, the literature's oldest idea, and governmental malfeasance, which had attracted relatively

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[19] The working definition of the Department of Justice is similar to Edelhertz's: "nonviolent illegal activities which principally involve traditional notions of deceit, deception, concealment, manipulation, breach of trust, subterfuge or illegal circumvention" (Civiletti, 1978:64-65). So is that of another attorney. See Ogren (1973:959,fn.1).

Other definitions explicitly following Edelhertz's include Chamber of Commerce of the United States (1974:3) and Conklin (1977:13), who uses Edelhertz's approach to study business crime.

little attention in sociology,[20] became the topics in the middle and late seventies. Much that appeared on the corruption and abuse of power in government seems to have had little cumulative impact; more significant has been organizational theory's discovery of corporate criminality. While the importance of organizational deviance had been remarked on a decade earlier (Reiss, 1966), only recently has much been accomplished (e.g., Staw and Szwajkowski, 1975; Ermann and Lundman, 1978; Schrager and Short, 1978; Gross, 1980).

For all the interest in white-collar crime over the past five years--publications seem to have multiplied exponentially--remarkably little analysis of the concept itself has been presented. Few authors offer definitions anymore; at least two have explicitly suggested that definition no longer matters, that white-collar crime's boundaries should depend on the specific purpose at hand (Wilson, 1978; Shapiro, 1980b; see also Katz, 1979), and others deliberately avoid "conceptual and terminological issues" (Geis and Stotland, 1980:11). Reiss and Biderman (1980) stand out as the most important exceptions to this trend:

> White-collar violations are those violations of law to which penalties are attached that involve the use of a violator's position of significant power, influence or trust in the legitimate economic or political institutional order for the purpose of illegal gain, or to commit an illegal act for personal or organizational gain (1980:4).

[20] There has always been a significant literature on the subject in political science.

Although social status is not mentioned, the requirement that a position of "significant power, influence, or trust" be employed harkens back to Sutherland's original notion of social hierarchy and abuse of trust.[21] The authors make clear, however, that such position need not be organizational or occupational (1980:9), and in this respect, move away from both Sutherland and many of their contemporaries. It is of consequence, too, that unlike Edelhertz and his followers, Reiss and Biderman say nothing about modus operandi[22]

CHARACTERIZING WHITE-COLLAR CRIME

We have seen what white-collar crime has meant to others. Five motifs have shaped discussion of the concept since Ross: social status, occupation, organization, legitimacy, and the abuse of power or trust. How useful are these if we wish to describe a single, homogeneous category of illegal behavior? What can we say about each?

Social Status

Social status criteria raise a number of problems. First, they separately classify deviant acts that seem virtually identical. The wealthy surely commit the same crimes as the less well endowed. Does it make sense to differentiate between a corporate officer's failure to

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[21] "A position is deemed to have significant power, influence, or trust when the actions of incumbents must be taken into account by others in the performance of their related roles" (1980:5). This seems rather broad, given any but the simplest division of labor.

[22] Indeed, they include crimes of violence against the person, e.g., the unsolved Karen Silkwood case, certain instances of police brutality, and the Buffalo Creek disaster (1980:11).

report taxable income and a migrant worker's? Between a doctor's medicaid fraud and that of the corner druggist? The immediate answer seems to be "no." Although never made explicit, the feeling that such distinctions achieve little motivated the "occupational crime" movement of the early sixties.

Measurement of social status may be problematic, too. Sociologists have since improved significantly on Sutherland's rather offhand treatment, but the concept remains inexact. How does one distinguish between individuals of high status and those who are less well thought of? Consider the doctor who performs an occasional abortion, or the politician caught in a sex scandal who is nonetheless reelected. Social status--and Sutherland's related notion of respectability--would seem to depend more on presentational strategy and group response than on objective personal characteristics.[23] In this context, the term raises at least as many questions as it solves.

Status-related definitions have been used to relate social class to differences in criminal opportunity, offense type, or the severity of social control. But, it has been argued, no one can test these links when, by definition, social class does not vary. Reiss and Biderman (1980), among others, reject the use of social status on these grounds. Nevertheless, as Katz (1979) points out, status distinctions may be necessary for critical social analysis. And it should still be

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[23] Sutherland never said why he added the respectability standard in White-Collar Crime, or how he thought it modified the requirement of "high social status." In his presidential address, he described white-collar criminals as "respectable or at least respected" (1940:1), suggesting that he, too, recognized the importance of presentation of self and subjective community perception.

possible to assess the effects of social class by comparing white-collar crimes with others that differ only with respect to offender status. Frauds carried out by poor folk are but one example.

Occupation

The requirement that a white-collar crime be committed in the course of one's occupation has been popular, adopted by many who have rejected definitions based on social class. It seeks to limit the kinds of illegal behavior under consideration by focusing on economic or business activity. Thus, bank embezzlement is a white-collar crime; bank robbery is not.

Unfortunately, like the social status criterion, the occupational standard also distinguishes between apparently similar forms of criminal conduct. Is a fraudulent application for a business loan any different than a phony application for welfare benefits?[24] Should not someone who sets a summer home ablaze to collect insurance benefits, and a person who burns a failing business for the same reason, be treated in like fashion? While occupational roles afford many opportunities for illicit behavior, it is clear that the same opportunities may arise in nonoccupational settings.

Occupation raises other problems. Although intended to limit attention to business or work-related conduct, "all violations that occur in the course of occupational activity" (Quinney, 1964:210), admits of gambling, dope peddling, even murder-crimes that few would

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[24] Meyer (1972) includes welfare fraud in his concept of occupational crime.

call white-collar.[25] And how does one determine when the offender is on the job? The common law wrestled with this problem in allocating responsibility for employees' torts; in the sociology of white-collar crime, it remains largely unexamined. Finally, the theoretical significance of occupational crime has never been fully articulated. Is there anything special about crimes committed at work, or is the concept merely designed to sneak social status considerations back into the discussion, by distinguishing between those who have a job, and those who do not?

Organization

Illegality in business has always been one of the literature's most important themes. Nearly all the field's major contributors--Ross, Sutherland, Clinard, Geis--have written about corporate or organizational crime. Yet the concept has never been carefully analyzed. Instead, like Sutherland's social status criterion, organizational involvement has been used to call attention to behavior previously unstudied, to urge social reform, or to advocate even broader ideological change.

That definitions have been simplistic and overly inclusive reflects this state of affairs. The most recent labels as corporate crime "any act committed by corporations that is punished by the state" (Clinard and Yeager, 1980:16). Even if we choose a narrower

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[25] Sutherland thought murder committed by an industrialist in the course of strike-breaking activities a white-collar crime (1941:112).

definition, focusing on corporate conduct forces us to distinguish between otherwise identical behavior occuring outside and within the organizational context. In this respect, a purely organizational perspective is no more advanced than one which centers attention on social status or occupation.

Too, as with occupational crime, one must ask whether the concept of corporate or organizational illegality really eliminates status-related issues. Corporate enterprise enjoys significantly greater status than relatively unorganized activity in any commercial society. And the interaction of individual and organization will be as much guided by considerations of relative rank as everyday encounters of persons from different social backgrounds. Whether outsiders are consumers or regulatory agencies, the deference and trust they accord organizations will depend directly on the fact of organization as well as organizational size.

Of recent theorists concerned with the role of organizations in white-collar illegality, Shapiro (1980b) has gone furthest, suggesting that white-collar crime be understood generally as conduct which by definition inheres in an organizational context (1980b:11). This takes the idea of organizational involvement too far. The notion becomes so sweeping as to include violations in both business and nonbusiness settings, as long as an organization serves as criminal actor, victim, or medium for the illegal behavior of others. Certainly, "organizational involvement" omits very little, given the ubiquity of the organizational form in our society. Shapiro herself admits the only phenomena excluded by the criterion are very simple con games and certain consumer frauds.[26]

Finally, the distinction between individual and organizational offenses is problematic. Previous work has employed two strategies to determine whether illegal conduct is individual or organizational. The first inquires as to the ultimate beneficiary of the illicit behavior; either the individual benefits at the expense of the organization, as in embezzlement, or the organization benefits without regard to individual advantage, as in price fixing. Hartung (1950), Bloch and Geis (1962), and Clinard and Quinney (1973) have all used this approach. It is not clear, however, whether intended or actual beneficiaries are to be considered. If intention is important, a good deal of psychological data is required before behavior can be deemed individual or organizational; if result is crucial, detailed follow-up of actual events is necessary.

The "who benefits" approach is essentially individualistic. Because it views the individual as criminal actor, it ignores the organizational flavor of much of contemporary social life. The second approach to the individual-organization distinction, on the other hand, looks at the organizational context of white-collar crime more closely, asking whether such behavior is in accordance with organizational goals.

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[26] Indeed, when one considers how broadly the term "organization" may itself be defined, "organizational involvement" hardly seems to help at all. For example, Aldrich (1979:4) defines an organization as a "goal-directed, boundary maintaining activity system." Stinchcombe (1965:142) calls it "a set of stable social relations deliberately created, with the explicit intention of continuously accomplishing some specific goals or purposes."

How does one decide whether behavior is in harmony with the goals of an organization? After all, published objectives may not correspond to organizational reality, and factions within an organization may support varied aims. Clearly, detailed accounts of organizational operations are required. Although developed in a slightly different context, Ermann and Lundman's (1978) analysis suggests that the sensitive observer must have information regarding organizational norms, socialization patterns, and the extent to which organizational leaders are aware of subordinates' activities before one can decide whether deviance is individual or organizational. Such information is, of course, hard to come by. All this makes it difficult to put the organizational goals approach into effect.

Legitimacy

Many activities, including ongoing, structured means of earning a living are illicit; positions providing illegal goods and services include those in organized prostitution, narcotics distribution, tape piracy, and the like. Thus, Clinard and Quinney modified the latter's initial definition of occupational crime to require that violations occur "in the course of activity in a legitimate occupation" (1967:131). But further complications ensue when apparently proper occupational settings or organizations are used to commit or cover up illegality. For example, facade organizations are often created to facilitate bankruptcy scams and mail frauds. Are roles within such organizations, or the organizations themselves, "legitimate"? Are such activities white-collar crimes? However these questions are answered, it will be as difficult to consistently define what is legitimate as it was to specify who is respectable. Of the few who have explicitly required that organization, occupation, or activity be legitimate, only Reiss and Biderman have recognized these pitfalls (1980:39).

Trust

Sutherland was not the first to associate white-collar crime with the abuse of trust. The connection has been noted many times since Ross wrote:

> But the fact is that the patent ruffian is confined to the social basement, and enjoys few opportunities. He can assault or molest, to be sure; but he cannot betray. Nobody depends on him, so he cannot commit breach of trust,-that arch sin of our time. He does not hold in his hand the safety or welfare or money of the public. He is the clinker, not the live coal; vermin, not beast of prey. To-day the villain most in need of curbing is the respectable, exemplary, trusted personage who, strategically placed at the focus of a spider-web of fiduciary relations, is able from his office-chair to pick a thousand pockets, poison a thousand sick, pollute a thousand minds, or imperil a thousand lives (1907:29-30).

Though references are numerous, analysis is almost nonexistent. The concept now appears in definitions (Reiss and Biderman, 1980), but students of white-collar crime have never thought a great deal about either the formation or breach of trust relationships. They have instead been content to cite Sutherland approvingly, or issue their own, unsupported, statements regarding damage "to the social fabric" (Geis, 1974:273) or political, economic, and social integrity (Civiletti, 1978), quoting authorities as diverse as Ramsey Clark[27] and

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[27] "White-collar crime is the most corrosive of all crimes. The trusted prove untrustworthy; the advantaged dishonest...As no other crime,

Marya Mannes.[28]

Studies outside the white-collar arena have followed either of two rather distinct traditions. The first is narrowly experimental, exploring the relationship between interpersonal cooperation and laboratory reward schedules; it has its roots in Morton Deutsch's (1958) work with the prisoner's dilemma game. Other writings on trust are found in the literature on economic and social modernization. Here, interpersonal trust has been viewed as a prerequisite for development (e.g., Banfield, 1958; Lerner, 1958); more advanced societies require that persons deal with outsiders as national markets replace local economic structures, and tribal and kinship groups break down. Parsons (1963), too, recognized that market economies depend on the institutionalization of trusting attitudes. He went on, however, to note that influence--or persuasion--also necessitates trust. "There must be some basis on which alter considers ego to be a trustworthy source of information and 'believes' him even though he is not in a position to verify the information independently" (1963:48).

Like conclusions have been drawn by Reiss (1974); that author sees trust as a form of social control. Primary group members need not trust, Reiss says, for their societies are held together by more direct means. Trust becomes necessary as soon as the collectivity grows sufficiently large and differentiated that each individual is no longer

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it questions our moral fiber" (Geis and Edelhertz, 1973:1004).

[28] "Without trust, a civilized society cannot endure. When the people who are too smart to be good fool the people who are too good to be smart, the society begins to crumble" (Geis, 1973:189).

subject to immediate observation and command. Trust relationships are thus an important, indeed essential, characteristic of the Gesellschaft--impersonality demands trust. Modern systems of exchange, founded on institutions of credit and contract, would never have evolved in the absence of interpersonal trust; commerce depends on the mutual reliance that each party will deliver as promised.

One is tempted, given this link between advanced market economies and interpersonal confidence, to talk about white-collar or nonviolent economic crime as by definition related to trust infringement. But crimes more common than those treated here may also be viewed as violations of trust. Indeed, much of modern life is characterized by trust and its violation. We could not live piled on top of one another, as we do in our urban conglomerations, unless we relied on our fellows to respect our physical integrity. A knife in the ribs or a blow on the head offends one's expectations as much as a deft hand in the pocket. I suppose all physical assault and theft, when committed by strangers at least, can be viewed as breaching the trust that keeps complex society going. Thus, the concept, though useful, cannot by itself answer all our questions regarding white-collar crime.

Typologies of White-Collar Crime

Definitions and the elements associated with them don't seem to work very well. At least one commentator has urged that we therefore move away from questions of definition, and become more concerned with the differentiation and classification of white-collar criminal behavior (Shapiro, 1980b). Of the few typologies which identify discrete categories of white-collar illegality, Edelhertz's (1970:19-20) is the most important. He has specified four kinds of white-collar crime:

1. "personal crimes," committed by individuals on an ad hoc basis in a nonbusiness context. These might include individual income tax violations and bankruptcy frauds.
2. "abuses of trust," committed in the course of their occupations by individuals operating inside legitimate business, government, or other establishments, in violation of a duty to employer or client. Examples of "abuse of trust" include bank embezzlement and insider securities fraud.
3. "business crimes," incidental to and in furtherance of business operations, but not their central purpose, such as antitrust violations or fraudulent commercial loan applications.
4. "con games," in which criminal activity is the primary concern of the organization, as in ponzi schemes and other mail frauds.

Edelhertz's typology differentiates white-collar offenses along two dimensions, an individual-organization axis, and a legitimate occupation-no legitimate occupation axis. Figure 1 illustrates his scheme. Each type occupies its own cell:

	individual	organization
legitimate occupation	2	3
no legitimate occupation	1	4

Figure 1: The Edelhertz Typology

Other typologies are comparable. John Meyer's (1972) three offenses, "structural," "situational," and "ancillary," correspond roughly to "business crimes" (cell three above), "abuses of trust" (cell two), and a blend of "abuses of trust" and "personal crimes" (cells one and two), respectively. Clarke's (1978) "corporate crime" and "criminal corporation" fit neatly in cells three and four; his blue-collar and white-collar crime belong in cell two. Although they focus only on crimes committed in legitimate settings, Clinard and Quinney's (1973) distinction between "occupational" and "corporate" crime moves along the above diagram's horizontal axis; Geis (1962) and Bloch and Geis (1962) make use of the individual-organization distinction, too.

Having the same structure, previous typologies encounter similar problems when implemented. As we have seen, it may be difficult to classify offenses as either individual or organizational, or to separate legitimate and other occupations. While they depend on troublesome distinctions, these schemes ultimately fail for a more fundamental reason. They have been developed on the basis of social context, rather than actual characteristics of behavior. Each of their categories will therefore include very disparate activities, while quite similar conduct will often fall into more than one class. In Edelhertz's typology, for example, cell one contains false claims with respect to government benefit programs, cell two takes in the filing of false travel and expense vouchers, cell three includes false statements with respect to government bidding procedures, and cell four contains fraudulent applications for credit cards (from Edelhertz, 1970:73-75).

Certainly, knowing whether illicit activity is individual or organizational, or whether it occurs within a legitimate or illegitimate occupation, provides useful insights regarding the structure of such activity. But if white-collar crime is supposed to be a particular kind of behavior, typologies of white-collar crime should reflect the elements of that behavior.

Other Materials

The failure of definitions and typologies suggests that we need to know more about actual conduct. What can other sources in the literature tell us about the nature of white-collar criminal activity? Not a great deal. Criminology has, in general, paid scant attention in recent years to the content and organization of illegal conduct. While much work has been done on individual etiology and the operation of the criminal justice system, little is known about criminal behavior, *per se* (Wheeler, 1976). This is certainly true of the study of white-collar crime. Journalistic accounts and more serious ethnographies of particular scandals have always been with us, but these have focused on very large, notorious offenses, rather than on more typical cases, and therefore cannot be used to characterize general classes of conduct. At the other end of the spectrum, relatively superficial policy manuals have been developed by corporate and government bodies concerned with the white-collar crime phenomenon, but these provide little, if any, of the detail that is required (Chamber of Commerce of the United States, 1974; National District Attorneys Association, 1975; Edelhertz, 1977). Exceptions exist (e.g., Lange and Bowers, 1979; Long, 1980; Shapiro, 1980a) but materials in between usually repeat commonplaces; no fresh look at the components of criminal activity informs their discussion.

The Problem

Serious thought about white-collar crime has thus failed in two fundamental--and related--ways. First, no one has demonstrated that any of the literature's primary themes--social status, occupation, organization, legitimacy, and trust--can by themselves answer the conceptual and policy issues that literature has raised. Second, although the need for more detailed attention to actual conduct has been apparent since the sixties (Bloch and Geis, 1962; Geis, 1962; President's Commission on Law Enforcement and Administration of Justice, 1967), no study has yet examined a wide variety of offenses, or a large number of cases. Instead, concepts have been developed absent sufficient empirical evidence, and speculation has focused on *ad hoc*, or particular, perhaps unique, examples. We need to outline the typical characteristics of individual offenses, measure the range of such characteristics, and then compare and contrast various crimes along similar dimensions. Only in this way can the content and social organization of white-collar crime be made manifest.

So we have to look at a broad spectrum of offenses and offenders. How broad? It would be impossible to study *all* criminal activity, and probably fruitless, too, for we want to examine behaviors that have something important in common. But just as social status has to vary if we are to measure its effects, so do occupation, legitimacy, and the like. In other words, we need relatively homogeneous cases in which offender's social status, the use of occupational role, organizational participation, perceived legitimacy, and interpersonal trust all fluctuate independently. I next describe one such body of data, explaining how it was used to create a meaningful typology of white-collar crime--an analytic framework developed in terms of social interaction.

Chapter II

TOWARD A TYPOLOGY OF WHITE-COLLAR CRIME

METHOD AND MATERIALS

Because previous research has not systematically examined the behavior of white-collar criminals in many different settings, it has not weighed the separate effects of each of the important parameters of white-collar conduct, and has thus failed to define a group of homogeneous activities worthy of continued scholarly attention. Where can we find routine descriptions of nonviolent economic crime in which individual characteristics and social context do not remain constant? The presentence investigation reports completed prior to the sentencing of persons convicted in the federal judicial system provide materials admirably suited to the problem at hand. These reports offer rich descriptions of the nature and social framework of the defendant's criminal involvement. They also present the defendant's own account of what occurred, which may include a personal apology or justification for admitted acts, as well as information concerning the defendant's family background, work history, and financial condition. The probation officer's evaluation of the defendant's past behavior and present circumstances concludes each report.[29] The documents thus

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[29] See Carter (1967), Carter and Wilkens (1967), and Administrative Office of the U.S. Courts (1978), for a more complete discussion of these materials.

contain precisely the data needed to construct a typology of white-collar crime on the basis of actual behavior.

The presentence reports used here were drawn from the several thousand collected by the research program on the sentencing of white-collar offenders at Yale Law School. These included reports for persons sentenced during fiscal years 1976, 1977, and 1978 for eight crimes chosen because of their presumptive white-collar character, and two nonviolent economic offenses not generally thought of in such terms. Specifically, the program studied those convicted of bank embezzlement, bribery, credit and lending institution fraud, false claims and statements, income tax violations, and postal and interstate wire fraud in seven federal judicial districts (Southern New York, Maryland, Northern Georgia, Northern Illinois, Northern Texas, Central California, and Western Washington), those convicted of antitrust violations and securities fraud in all districts in the country, and a selected sample of those sentenced for forgery and postal theft in each of the seven focal areas. It thus examined a large, reasonably representative sample of most of the nonviolent economic crime prosecuted in the federal courts.

Within this collection of cases are many that would not meet one or more definitions of white-collar crime. Some involve working class men and women. Others take place in nonbusiness settings. Not a few describe conduct and organizations of questionable legitimacy. But these are precisely the strengths of the data. The sentencing project's cases describe in full detail the concrete behavior of people convicted of nonviolent economic crime. The theoretically important features of such activity--social status, occupation, organization, legitimacy, and trust--all vary. And the scope of the investigation has not been initially circumscribed by undue attention to one or another of these parameters. If there are behaviors within this wide field deserving of continued interest, for abstract or more practical reasons, we can use these presentence reports to find them.

<u>Background Research</u>

In February 1980, I began to examine a limited number of the presentence reports housed at Yale. The purpose of my work was to describe, in a preliminary fashion, the activities prosecuted within each of the legal categories being studied by the sentencing project. As I reviewed a small number of reports from each of the statutory categories, it became clear that my research might proceed in one of three directions. The first would require that I organize my presentation around traditional legal divisions. Thus, I might look at conduct prosecuted as mail fraud one week, cases labeled tax evasion the next, and so on, making no real attempt to show how similarities in actual behavior cut across the boundaries established by the U.S. Code.

The sentencing project's approach provided an alternative. There, an effort had been made to record the presence or absence of elements that might conceivably appear in any of the offenses being investigated. This method demanded that close-ended coding reflect a relatively limited number of basic dimensions of criminal activity, victimization, and coverup.

I thought this a more promising approach than the first, since it recognized that elements of behavior might not correlate precisely with the classification of such behavior adopted by the criminal law. The creation or misuse of documents to hide illegal activity might, for example, occur during a mail fraud, embezzlement, or securities violation. But while the coding process was fine for studying the predictors of sentencing, it was far too restrictive for other purposes; how could it fully reproduce the richness of detail and behavioral variation contained in the presentence reports? It seemed it might be more rewarding to go one step further: to attack the problem qualitatively, describing as completely as possible universals that ignored statutory categories, then combining observations of such universals into a typology of the activities commonly termed white-collar crime.

The Sample

Yale originally intended to code all the presentence reports it received from the Administrative Office of the U.S. Courts. However, it soon became apparent that available resources did not permit such an effort. A stratified random sample was therefore drawn from the larger collection of reports for detailed analysis. Table 1 shows the number of cases in each crime category, by district, in this smaller group. My sample was itself drawn from this more limited set, so that I could take advantage of the data generated by the sentencing project's coders.

TABLE 1

Distribution of Sentencing Project Cases

	SDNY	Md	Ga	Ill	Tex	Cal	Wash	Other	Total
forgery	15	14	13	14	15	15	16	-	102
postal theft	15	14	15	15	15	15	12	-	101
bribery	25	5	-	15	7	15	2	-	69
credit fraud	29	6	16	14	29	27	23	-	144
embezzlement	28	28	22	29	30	28	30	-	195
false claims	28	8	20	14	20	30	24	-	144
mail fraud	26	28	24	27	24	29	8	-	166
tax evasion	30	29	29	30	30	29	30	-	207
antitrust	3	2	1	-	-	1	-	26	33
sec fraud	44	-	-	1	4	15	1	50	115
total	243	134	140	159	174	204	146	76	1276

As the typology was to depict as clearly as possible the varied activities prosecuted in each of the sentencing program's eight white-collar categories,[30] the sample was drawn to fully reflect the diversity of the conduct described in the project's presentence investigation reports. First, the sentencing project's definition of "case," which included only codefendants named in a single indictment, and not all persons charged as a result of the same or related investigations, was expanded to include every prosecution arising from the same set of facts. This meant that a series of connected "cases" would be counted as one, even if they had been treated separately by the sentencing project. I thus had a smaller pool of "cases" than is

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[30] Examination of the two "common crimes," forgery and postal theft, was thought useful for comparative purposes. Certainly, given the thrust of the research, there was no reason to assume, a priori, the existence of significant conceptual differences between these offenses and the eight others.

shown in table 1 to select from, but a much better chance of maximizing the number of really distinct patterns of criminal activity in my sample.

Next, for all crimes except antitrust and securities fraud, cases within legal categories were drawn as nearly equally as possible from each district. Populous districts tend to produce large numbers of very similar cases, and a single investigation or program within a U.S. Attorney's office often yields many cases that are essentially interchangeable. I also thought it wise to make use of the geographic diversity captured in the sentencing program's sample. By taking virtually equal numbers from each district, geographic variation was preserved, and no single district allowed to dominate the individual samples for these eight offenses.

Three cases were read from each district for postal theft and forgery, the two so-called common crimes. For each of bank embezzlement, credit and lending fraud, false statements, mail fraud, and tax evasion, a total of 35 cases, drawn equally from the seven districts, were sampled. As there were not enough bribery cases from Maryland, Northern Georgia, and Western Washington to follow the same procedure for that offense, all cases from those three districts, and seven cases from each of the remaining districts, were included in the bribery sample. Finally, because the Yale project studied those convicted of securities fraud and antitrust violations in all districts of the country, an unstratified national sample of 35 was drawn for the former, and all 33 antitrust cases in the Yale sample were read. Table 2 reflects the distribution of cases in my sample. The number of defendant reports, individual and corporate, that were read is indicated parenthetically.[31]

TABLE 2

Sample Cases and Defendants*

	SDNY	Md	Ga	Ill	Tex	Cal	Wash	Other	Total
forgery	3(3)	3(3)	3(5)	3(3)	3(3)	3(3)	3(6)	-	21(26)
postal theft	3(3)	3(3)	3(3)	3(4)	3(3)	3(3)	3(4)	-	21(23)
bribery	7(12)	5(11)	-	7(8)	7(8)	7(8)	2(2)	-	35(49)
credit fraud	5(5)	5(5)	5(5)	5(5)	5(5)	5(8)	5(6)	-	35(39)
embezzlement	5(9)	5(5)	5(5)	5(6)	5(6)	5(18)	5(5)	-	35(54)
false claims	5(10)	5(5)	5(7)	5(5)	5(8)	5(7)	5(9)	-	35(51)
mail fraud	5(12)	5(11)	5(12)	5(16)	5(14)	5(11)	5(7)	-	35(83)
tax evasion	5(5)	5(11)	5(5)	5(5)	5(5)	5(5)	5(5)	-	35(41)
antitrust	3(29)	2(9)	1(8)	-	-	1(5)	-	26(162)	33(213)
sec fraud	11(56)	-	-	-	3(4)	2(7)	-	19(45)	35(112)
total	52 (144)	38 (63)	32 (50)	38 (52)	41 (56)	41 (75)	33 (44)	45 (207)	320 (691)

*Defendants in parentheses

At the time I gathered my data, the Yale project had not focused specifically on corporate behavior, in part because it was particularly interested in the decision to incarcerate. It had for this reason not

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[31] Virtually all defendants, except those in antitrust cases, were individuals. Of 213 antitrust presentence reports, 117 were written for individuals, 96 for organizations.

The reports/cases ratio is to some extent misleading, for it is only a rough guide to the numbers of persons actually involved in a particular crime. Presentence reports for certain individuals were missing from the Law School's files. This was frequently true when codefendants pled at a much earlier stage of the process, or had not yet been declared guilty. Not all separate prosecutions of related cases were forwarded by the Administrative Office. And, of course, persons never indicted, and those eventually found innocent, are also unrepresented in the table.

yet coded the presentence reports of corporate defendants. Given the historical interest in corporate illegality that has characterized white-collar crime research, I decided to read all of the cases at Yale that involved corporations, even when I did not happen to draw them for my own sample. Table 3 indicates where such cases were found. Again, the number of defendant reports actually read appears in parentheses.

TABLE 3

Nonsample Corporate Cases

	SDNY	Md	Ga	Ill	Tex	Cal	Wash	Other	Total
forgery	-	-	-	-	-	-	-	-	-
postal theft	-	-	-	-	-	-	-	-	-
bribery	1(1)	-	-	-	-	-	-	-	1(1)
credit fraud	-	-	-	-	-	-	-	-	-
embezzlement	-	-	-	-	-	-	-	-	-
false claims	1(2)	-	-	-	-	-	1(2)	-	2(4)
mail fraud	1(4)	-	-	-	-	1(3)	-	-	2(7)
tax evasion	-	-	-	-	-	-	-	-	-
antitrust	-	-	1(2)	2(8)	-	1(6)	1(1)	6(17)	11(34)
sec fraud	-	-	-	-	-	-	-	-	-
total	3(7)	-	1(2)	2(8)	-	2(9)	2(3)	6(17)	16(46)

Once sampling was complete, I analyzed each of the presentence reports, focusing on those sections that contained detailed descriptions of the defendant's acts, i.e., the prosecution's version of the offense, the defendant's account of the crime, and the probation officer's own evaluation. I identified characteristic offense attributes, comparing and contrasting types and subtypes along similar lines. In reading each report, questions like these served as informal guides for my inquiry:

- What kind of conduct was involved?
- Where did the offense take place? How long did it go on? How was it accomplished?
- How many actors were there? What did each do?
- What kind of people participated in the offense? What were their personal and social characteristics?
- How many victims were there? What was interaction between victim and perpetrator like? What were the personal and social traits of the victims? To what extent were they harmed?
- In what way, if any, did the offenders try to cover up their crime? How was their behavior discovered?

INSIDE THE STATUTORY CATEGORIES

If one looked only at statute books, the crimes under study would seem to describe very different forms of conduct. One might well doubt they had anything in common at all. But analysis of the cases that typically arise within each of the eight legal categories shows this is not so. Important similarities in the content and structure of criminal activity intersect each of the statutory boundaries. In fact, the universe of seemingly disparate phenomena found in the eight classes includes what I believe to be only four basic kinds of behavior. Before this underlying configuration is described, however, the reader needs a closer look at the varied conduct prosecuted pursuant to each of the white-collar statutes.

Bank Embezzlement

> Whoever, being an officer, director, agent or employee of, or connected in any capacity with any Federal Reserve bank, member bank, national bank or insured bank...embezzles, abstracts, purloins, or willfully misapplies....

So begins 18 USC 656, the federal bank embezzlement statute. As its first words suggest, embezzlements may occur at all levels of the banking hierarchy. Those committed in lower echelons by tellers and clerks are most frequently simple thefts in which money is taken from cash drawer or safe. Here, the actor has "a hand in the till," for the embezzler, having routine access to the daily cash flow, simply takes some money, depositing it into a personal account, or slipping it into a pocket. Included are instances in which blank money order forms or traveler's checks are filled in to the employee's own advantage. In all cases, the money taken cannot be identified as belonging, in any sense, to an individual. While coverup is mentioned only rarely--in one case, a teller was said to have falsified daily balance sheets--something of this sort must accompany many otherwise simple thefts, as quite a few of these cases go undetected for a period of weeks or months.

Such cases are generally uncovered more rapidly than those involving account manipulation, however. Special accounts maintained by banks to facilitate internal review or transfer funds between institutions are sometimes targeted here. Three thefts by relatively insignificant clerical employees underscore their vulnerability. While it was not clear whether these workers had relied on special expertise, it was apparent they were not closely supervised, for their crimes remained undiscovered for up to a year or more.

Cases of account manipulation more frequently witness the direct theft of customer funds. This may be accomplished in a variety of ways. Most common is the use of forged withdrawal slips by bank tellers; amounts are simply taken from savings or checking accounts without authorization. A limited series of deposits to and withdrawals from different accounts is occasionally made to render discovery more difficult.[32] Again, crimes of this sort may continue for a surprisingly long period of time. Many accounts are relatively inactive, and depositors who do not pay close attention to their finances often remain unaware of secret transactions. Other cases involving direct takings from customers include those in which the teller skims part of a cash deposit[33] or forges the payee's endorsement on a check issued by the bank itself.

Bank embezzlement of the "hand in the till" variety may also occur in more rarified circles, when one or more loans are made to "nonapplicants" by bank loan officers. As before, anonymous bank money is taken without authorization by someone with ready access to such funds. The purported loan recipient does not exist or is unaware of what is going on, and the proceeds of the loan go no further than the employee's own pockets. Actors rarely intend repayment; when they do, they use a "loan recycling" scheme, in which a series of subsequent loans is "made" to repay earlier ones.

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[32] This technique is known as "lapping" (Allen, 1975).

[33] This may occur when the customer mistakenly hands in more money than is indicated on the deposit slip; the teller deposits the amount shown and simply pockets the rest.

Cases in which the bank employee acts alone far outnumber those involving more than one person. Embezzlement is an offense for solo performers.[34] It is surprising that no embezzlement case involves teams of employees; in only a handful is there even a hint that a fellow worker participated in, or was aware of, the defendant's acts.

Thus, it is worth making separate mention of the embezzlements committed in concert with outside individuals. Offenders at both ends of the bank's social ladder are responsible for cases in this final category. Tellers knowingly accept fraudulent withdrawal slips; officers approve loan applications understood to be false. A vice-president of an important commercial bank in New York City, for example, made a series of large loans to foreign ship owners. All the participants knew that collateral was overvalued and that loans would never be repaid; the bank lost between thirty and sixty million dollars. Cases involving tellers are not much different, though they seem penny ante by comparison. Withdrawal slips forged by a friend on the other side of the teller's window do not allow for nearly as much thievery as the loan applications of apparently substantial corporations.

The typical case of bank embezzlement does not involve a great deal of money. Thefts larger than $100,000 are infrequent; the median embezzlement in the sentencing project's collection of reports is in the $5-10,000 range. The average defendant is employed in a relatively menial position at a local bank branch. Most have no more than a high

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[34] This observation is corroborated by U.S. Fidelity and Guaranty Company (1937) and Cressey (1953).

school education and come from stable working or lower-middle class environments; many are women, several are black.[35] Once caught, defendants often cite straitened financial circumstances. Certainly, a few thousand dollars may appear quite a large sum to someone who earns only six or seven thousand annually.

Bribery

Title 18, section 201 of the U.S. Code defines bribery of public officials and witnesses. The most important of its provisions applies to

> (b) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official....

if the giver intends to influence any official act, to gain official complicity in a fraud against the United States, or to induce a violation of the official's lawful duty, and

> (c) Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value....

when such thing of value, again, is in return for the performance of an official act, complicity in a fraud against the federal government, or violation of official duty.

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[35] The education of 57% of the embezzlers coded by the sentencing project did not extend beyond high school, though more than four-fifths of these held a high school or general equivalency diploma. Forty-one percent were women; 24% were nonwhite.

Bribes like those in the project's sample are most frequently offered, in Reisman's terms, "to secure the suspension or nonapplication of a norm" (1979:75). Less frequently, the objective is "not to secure the performance of a particular act, but rather to acquire an employee" (1979:89-90), i.e., to "buy" an insider on a continuing basis.[36] Tax audits, naturalization proceedings, bidding for government contracts, certifications of one sort or another--these are the settings in which bribery occurs. Relatively small amounts and minor federal officials are the order of the day. Five hundred to a thousand dollars is average, though amounts may add up in continuing cases. Here are three examples from the files:

- A VA "property fee appraiser" accepted $1360 over an eleven month period from a single real estate broker. In exchange, the defendant overvalued homes being sold to veterans seeking federal mortgage insurance.

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[36] This distinction, between "variance bribes" and "outright purchases," is not always clear, for a series of one shot "variance bribes" can be made to secure the performance of individual acts. Although an existing norm is being violated on a continuing basis, it cannot be said that the insider is being "bought" for the first and all later transactions, since separate payments for separate acts are made. Many of the project's bribes that look like "outright purchases" are continuing series of discrete payments.

Two examples illustrate how slippery the distinction between "variance bribes" and "outright purchases" can be. How does one classify cases in which USDA employees routinely receive gifts of meat as they conduct weekly meat packing inspections? Or that of the real estate broker who bribes the same HUD official on five separate occasions to illegally change five separate bids the broker has submitted? The distinction seems to most depend on how routinized or institutionalized the relationship between giver and taker becomes.

- An SBA loan applicant was told that approval of his request would "cost" $3000. He made the necessary arrangements, but later went to the FBI and had the loan officer arrested.
- Investigation of the efforts of a USDA employee began when the owner of a small supermarket complained of shakedown attempts. The defendant eventually admitted receiving approximately $8000 in cash and the equivalent in foodstuffs from some 200 stores whose participation in the food stamp program he evaluated in four years on the job. According to the defendant, it had never been necessary to solicit these payments; they were almost automatic in the area.

These last two were really instances of extortion; cases where officials abused their authority, forcing reluctant persons to act.

Not a few of the project's bribery cases are really cases of attempted bribery.[37] The many IRS cases are typical. Agents, working individually with the taxpayer, are asked indirectly whether they might be willing to accept a bribe. Replies are vaguely worded, and taxpayers are strung along for one or more additional meetings. Firm commitments are not made, and money does not change hands, until such time as agents are wired or conversations between agents and taxpayer are otherwise monitored. In such instances, of course, detection is not problematic. However, many one shot cases in which a bribe is accepted must remain undiscovered.

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[37] Not technically, of course, given the language of section 201(b), "Whoever...offers...anything of value..."

Bribe takers are apprehended in one shot cases only when they solicit the bribe and the other party refuses to go along at once or later thinks better of such conduct. In one shot cases, at least, either the party making the first move will be prosecuted (because the other is honest) or neither party will be prosecuted (because both are dishonest). In continuing cases, bribe takers who routinely demand bribes are likely to be reported, either by a party who has complied with similar demands in the past but is now no longer willing to do so, or by a new client who does not much appreciate "business as usual." When both parties to a continuing series of bribes or an outright purchase remain silent, they may be caught only by a broader investigation, as in cases involving Postal Service employees in Maryland and buyers for the Army and Air Force Exchange Service.

U.S. Code provisions analogous to those quoted outlaw bribery in other contexts regulated by Washington, such as banking, organized sports, and federal-state entitlement programs. A case focusing on medicaid abuse in the Chicago nursing home industry, prosecuted pursuant to 42 USC 1396h, is illustrative; it involved kickbacks made to insure the purchase of medical supplies and equipment from two pharmaceutical supply houses. In a second case brought under these miscellaneous statutes, built entirely by a team of IRS accountants, three recording company executives bribed disc jockeys and other radio station employees to play their company's records over the air (in violation of 47 USC 508). Bribe monies were generated by failing to enter certain profits from record sales in the company's books, and by issuing fictitious credit invoices, purportedly for promotional activities that had been performed, to customers whose return payments were likewise never posted. Perhaps because there are no federal employees around to turn offenders in, arrangements in these cases frequently persist for some period of time. And as in continuing cases involving government officials, wider investigations are generally required before bribery networks are brought to light.

Credit and Lending Institution Fraud

18 USC 1014 provides:

> Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the Reconstruction Finance Corporation, Farm Credit Administration, [here are enumerated a long list of intended victims] upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more that $5000 or imprisoned not more than two years, or both.

The statutory language is, of course, quite general, and at the level of greatest generality, loan fraud cases are easy to describe. Individuals, acting on their own or on behalf of a business organization, request a loan from a bank that belongs to the Federal Reserve System or whose deposits are federally insured, providing false information regarding identity, resources, or collateral to support their application.

Personal loan applications account for a bit more than half the credit fraud sample.[38] Most of these are tendered by defendants from

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[38] Applications for credit cards and line-of-credit bank accounts were

lower or working class backgrounds. In one such instance, a defendant made four fraudulent applications for line-of-credit checking accounts at the same bank. These, filed during a single month, bore fictitious names, addresses, and social security numbers. In addition, an employment reference was fraudulently verified by the company the defendant had listed. The bank lost $3000 as a result. Another individual made his four applications to different banks, failing to note each of the other applications and inflating reported assets. Every request was approved for $2000. When contacted by one bank regarding repayment of these vacation loans (the defendant did make a trip to Las Vegas), the applicant announced he was going into bankruptcy. As in these two cases, the average personal loan request is for less than $10,000. Commercial loan cases generally involve somewhat larger sums, but even here, small businesses, often owned by sole proprietors or a few partners, predominate. In many personal cases, the loan's alleged purpose remains unstated in the presentence report. Business loans are generally designed to meet immediate cash flow problems or to purchase inventory and other equipment.

Some cases involve collusion between loan applicants and a third party providing credit information to the bank. In one such instance, a defendant, with the help of an employee of a private credit bureau having computer access to individual credit records, arranged for the erasure of derogatory account information. Once armed with a satisfactory credit record, the applicant was certain of prompt

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always made on behalf of individuals and are included here.

approval of his loan request.

Several lending and credit defendants were insiders who defrauded their own organizations. The assistant treasurer of a credit union wrote checks to himself against dormant credit union accounts, transferring funds between accounts to hide his activity. A bank vice-president retained the proceeds of four loans he authorized to nonexistent individuals. And a Bank Americard center employee issued credit cards to an accomplice and members of his family. Such cases look very much like embezzlement.

Insiders may also work cooperatively with those outside the bank. A Seattle bank officer knowingly approved a series of "home improvement" loans for associates of a small-time gambler. In each case he received a kickback of $200. This same individual also granted a number of "boat" loans, knowing the proceeds were really going to be used to capitalize rather risky business ventures. For these favors, he was wined and dined, but received no cash.

Other cases are still more diverse. One, from the Southern District of New York, involved a company that was licensed by the SBA to make loans to small businesses (using both the government's money and funds the company had itself raised). The company did not maintain an arms-length relationship with its borrowers, however, thus violating its agreement with the SBA. For failing to disclose these facts, the company was indicted for "making a false statement to the SBA" (18 USC 645). Another defendant failed to remit to HUD rent monies she had collected in a federally-sponsored housing project. Finally, a Washington case involved collusion between a mortgage company trying to refinance a loan it had made, and the president of the bank it was attempting to do business with.

HUD frauds are classified with credit and lending institution schemes by the Administrative Office of the U.S. Courts and thus appear with loan frauds in the project's files. This second group of cases are prosecuted under 18 USC 1010 and 1012. Most grow out of HUD's mortgage insurance program for inner city housing. The typical case looks much like a bank fraud; applications for mortgage insurance are accompanied by fictiticus information regarding employment, assets, or credit history. These may be submitted by brokers and mortgage companies on behalf of individual applicants (the real estate people are aware of and often actively encourage the fraud), or less frequently, by the applicants themselves. It is also true that individual applicants, or brokers and mortgage companies, may team up with agency employees to work such schemes. In any event, it is again worth noting on how much wider a scale organizations operate.

Other cases involve fraudulent bidding for properties repossessed by HUD. These HUD auctions are noncompetitive; the agency sells homes at a reasonable price to a buyer chosen at random. Preference is given tc persons indicating they will actually live in the house, thus preventing speculation and furthering federal policy regarding the availability of moderately priced urban housing. Real estate agents take advantage of this process by submitting bids on behalf of straw occupants, bidding on their own behalf, or using the names of compliant friends or entirely fictitious persons. In any event, the "bidder," if successful,[39] does not assume occupancy; the agent resells the property at a handsome profit. Other HUD programs giving pricrity to those who will occupy a home or apartment are subject to similar abuse.

False Claims and Statements

The statute most frequently employed in these prosecutions is 18 USC 1001, governing false statements:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

A separate provision, 18 USC 287, relates to false claims:

> Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Statement or claim, defendants have in these cases lied in a matter involving an agency of the United States. The most common fact patterns include medicaid abuses by professionals and organizations, false tax returns, VA and HUD mortgage insurance frauds and related HUD frauds, false claims regarding VA educational benefits, and similar false claims for social security program payments.[40] While the most

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[39] Note that the submission of several such fraudulent bids may significantly increase the odds that any one of them is chosen.

[40] As some of these suggest, conduct indictable under other headings

frequent victims of false claims are HUD, the VA, the IRS, and HEW, there are a wide variety of other targets, too. To appreciate this diversity, consider the following cases in my sample:

- A former serviceman who had been less than honorably discharged from the Army enlisted in the Air Force under his brother's name, using the latter's discharge papers. This entitled the defendant to three months pay in advance. Using copies of the discharge papers, the defendant secured three such advances in as many weeks.
- A prisoner in Leavenworth falsely swore under oath that certain promises made by the government regarding his sentence had not been kept.
- An employee of the U.S. Marshal's Service, responsible for maintaining records of the hours worked by fellow prisoner guards, padded time sheets, pocketing some or all of the unearned pay due his colleagues.
- A college professor understated his income on his son's Guaranteed Student Loan application so that the loan would appear to qualify for federal interest subsidies.
- A welfare mother claimed she had not received 32 SSI checks in 18 months. In fact, the defendant had in each case cashed the original check, accepted an emergency loan in the amount of the "stolen" check, and eventually received a duplicate which she cashed, rather than repaying the emergency loan.

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may be prosecuted as a false claim or statement.

There are two distinct situations in which false statements cases arise. In the first, one or more individuals act illegally _qua_ individuals. In the second, one or more persons make false statements on behalf of an organization. The former are more numerous, but somewhat smaller in magnitude. Cases arising in an organizational context may involve as much as $25,000 or, occasionally, even more; when unaffiliated individuals lie, they generally do so for less than $5000.

Mail Fraud

Mail fraud is defined by 18 USC 1341. In pertinent part, it reads:

> Whoever, having devised or intending to devise any scheme or artifice to defraud...for the purpose of executing such scheme or artifice or attempting to do so, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom any such matter or thing, or knowingly causes to be delivered by mail...any such matter or thing, shall be fined not more than $1000 or imprisoned not more than five years, or both.

Section 1343 defines fraud by wire, radio, and television in similar terms. It is evident from the breadth of the statutory language that cases in either legal category must be rather heterogeneous; the single element common to all is the use of the mail (or electronic media). Certain mail fraud victims are induced to purchase something for more than it is really worth. Often, the victim "buys" something that does not exist at all. Cases include land fraud schemes, the marketing of oil wells that are dry or nonexistent, sales of rare coins allegedly being held in a safe deposit box for the buyer, and the like. Investors are solicited, send in their money, and discover sooner or later that they have been tricked. Schemes which cause the greatest distress involve many unconnected, uncoordinated victims (whether organizations or individuals). In these, total losses may be very large.

If victims are tricked into buying "nothing for something" in one kind of mail fraud case, then they are fooled into giving "something for nothing" in another. Organizations are always the targets of such frauds; typically they extend something of value (cash, credit, or merchandise) on the basis of false information provided by defendants. These men and women are commonly members of the lower class; their schemes, usually involving phony applications for credit cards and government benefits, seem relatively unsophisticated and do not involve a great deal of money. Of course, there are exceptions. In one instance, a bank's teletype operator, familiar with the procedures and codes by which banks transfer money, sent telex instructions requesting that other banks turn over specified funds to a certain individual described as having lost his identification. The bank receiving these instructions was told that such funds would be transferred to it at a later date. These teletype messages could not, by their nature, be traced to their source. The defendant did this six times in eight months, collecting $18,500 in the process.

The distinction between "buying something for more than it is worth" (or buying "nothing for something"), and "extending something of value on the basis of false information" (or giving "something for nothing"), is not without ambiguity. Consider the doctor prosecuted for mail fraud when he certified to the Food and Drug Administration that he had successfully completed premarketing tests of a new drug. The FDA paid the doctor for performing the tests, only to learn that the tests either remained incomplete, or had not been done at all. At first blush, it looks as though the victim extended something of value (here, cash) on the basis of false information. However, one may also argue that the victim in fact bought something--a drug test--for more than it was worth. Looking at the case in this fashion, it may be hard to differentiate the purchase of a quarter-acre of New Mexican desert and the government's purchase of a laboratory procedure. In both instances, the defendants have successfully "passed" a defective product. Perhaps, as the next chapter suggests, the distinction should depend more on some property of the exchange between perpetrator and victim than on shorthand descriptions of defendant behavior.

There are cases, of course, that do not fit any pattern. Thefts committed by an organizational insider, in which an employee in a boundary-spanning role (one linking the organization and its external environment; Thompson, 1962) pockets monies being forwarded by the organization to outside individuals, or knowingly processes false claims filed by an external actor, are sometimes prosecuted as mail frauds. So are cases of collusion. The Marvin Mandel case is a leading example. The former governor of Maryland was convicted for aiding passage of state legislation favorable to a race track secretly owned by associates. In return, he received a variety of financial benefits. Others in my sample include an attempted bid rigging case (which can be viewed as an attempt to defraud the victim federal agency), and one in which an organization's employee accepted kickbacks in awarding contracts.

Tax Offenses

Tax offenses are typically prosecuted under one or more of several related statutes. These include 26 USC 7201, applicable to "any person who willfully attempts in any manner to evade or defeat any tax"; 26 USC 7203, which prohibits on the part of persons required to "pay any estimated tax or tax...make a return...keep any records, or supply any information," the willful failure to do so; and 26 USC 7206(1), which sanctions any person who "willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter." However prosecuted, IRS violations may involve submission of fraudulent returns, failure to file personal or business returns, unlawful retention of taxes withheld from employees' paychecks, or tax protest. The first of these is most frequently encountered.

There are, in fact, several kinds of fraudulent return. Most common is the underreporting of legal income. Offenders are typically self-employed, without prior record, and in middle to upper income brackets. Defendants operate a business of some kind, handle their own accounts, and are thus in position to manipulate records and hide earnings. While amounts vary considerably, they are appreciably greater than the sums at issue in other kinds of IRS fraud. Unreported income in this category ranged from less than $10,000 per year to as much as several hundred thousand dollars annually. Income from business sources is most often underreported, but there are cases in which personal income, usually from investments, is involved.[41]

Illegal income may also go unreported. Often, such income is bribe money. Bribe takers included a local elected official, a New York City agency attorney, and in an interesting case, a number of employees of the general contractor building the Calvert Cliffs nuclear power plant in Maryland, who were accepting kickbacks in awarding construction subcontracts. Bribe givers were also prosecuted for tax offenses in this instance, having disguised payoffs as unrelated, deductible expenses on their corporate returns.

All defendants prosecuted for failure to report illegal income are suspected of unrelated criminal activity, but are not so charged for legal or evidentiary reasons. Several have a history of serious criminal involvement. One subject, convicted for not reporting income from the sale of heroin and cocaine, was a reputed narcotics trafficker with mob connections. Because the statute of limitations for the alleged drug offenses had expired, the government settled for tax evasion in his case.

Only a few taxpayers fraudulently overstate deductions. Of course, this method is the one most available to those millions who are not self-employed and who therefore cannot readily underreport income. But given the nature of the tax computation process, the amounts illegally saved by inflating deductions will be less, sometimes much less, than those gained by underreporting. Perhaps this is why there

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[41] Whether income is business or personal, most offenders are caught by the IRS's "net worth" method, which compares alleged income and traceable assets. Underreporting taxpayers thus have to hide assets in a rather sophisticated way if they wish to escape detection.

are so few cases of this kind.

Some folks simply do not file a return. Like individuals who underreport income, most of these persons are self-employed. However, unlike the former group, those who do not bother to file do not run their own business organizations; they do not keep separate books or take other steps to hide income. A few are among the most wealthy of IRS offenders; I found a number with incomes in excess of $100,000. Doctors may be overrepresented here because of special IRS investigations of such taxpayers.

Defendants who underreport or fail to report entirely may remain undetected for a number of years. However, only one defendant, in a manner like that of several mail fraud offenders, seemed to pursue a career of IRS fraud. Operating without books, he opened and closed a series of X-rated movie theaters, using corporate shells so he would not appear as the owner of record. Coming into town only periodically to collect receipts, the defendant would provide the theater manager with just enough cash to pay selected bills, and then disappear. The probation officer documented a series of schemes of this general type over a period of two decades. In this particular instance, the defendant was said to have skimmed $890,000 from his theater operation in four years.

There are employers who deduct withholding and social security taxes from their workers' paychecks, but fail to remit these funds to the federal government. Acting on behalf of the IRS, their position is similar to that of bank employees who intercept deposits, or sales personnel who pocket customer payments instead of passing them on to the company's treasury. Such acts seem more like failures to file than underreporting, in the sense that employers typically keep all withheld monies for themselves and do not bother to send along incomplete payments accompanied by false returns.

Political or religious conviction, not economics, motivates tax protestors. Arguing that paper money is worthless because it can no longer be redeemed for gold (and hence, cannot be income) or that the federal income tax is unconstitutional, "conscientious objectors" claim an inflated number of exemptions or refuse to file at all. They typically belong to local tax protest groups and may point to the example of leaders who have made local appearances or been on radio or television. Most tax protestors are lower-middle class; a number give evidence of unusually strong, fundamentalist religious views.

Tax violators rarely try in a really clever way to cover up misdeeds. One taxpayer, for example, submitted altered personal checks to document claimed medical expenses and charitable contributions. However, the fact of alteration was obvious, for the original amount had been printed by the bank on the face of each check! In addition, the cancelled checks had already been microfilmed; correct deposit slips and monthly statements were also available.

Although coverup is not a factor in most tax cases,[42] tax frauds in which an attempt is made to substantiate the return are more complicated than the average false claim or loan fraud case. Here, blind faith in the actor's claims cannot be expected--as it apparently

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[42] In only 20% of the sentencing project's tax cases were documents invented or manipulated to support a false statement.

can when one deals with banks or other government agencies. A few of the tax cases thus take on the fabled attributes of white-collar crime, at least to the extent they make life difficult for investigators and trial attorneys, as in the prosecution of two upstate New York brothers, co-owners of a resort hotel and racing stable, who were depositing business receipts into personal checking accounts. Though conceptually simple, the gambit took twelve months to dope out completely, and a lengthy trial was required before the two could be sent away for five years.

Antitrust Violations

The Sherman Act (15 USC 1) declares illegal "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations." Prosecutions pursuant thereto most commonly focus on price fixing.[43] Competing executives strike a "gentlemen's agreement"[44] to restrict the movement of prices of goods or services, or to

[43] Sutherland (1949a:62) distinguished three kinds of antitrust violation. He found that trade might be illegally restrained by means of improper business consolidation, price fixing, or price discrimination. In the first category, smaller, less successful businesses are absorbed by larger, financially secure corporations. The larger firm gains a greater share of the market and competition is impermissibly reduced. Price fixing involves the collusion of several organizations; discriminatory pricing, on the other hand, is intended to injure particular competitors and may or may not involve interfirm coordination, as prices are adjusted with reference to a specific geographic region or corporation. All but one of the project's antitrust cases involved price fixing; there was one case of price discrimination.

[44] All individual defendants in the sample were men.

coordinate bids for labor and other supply contracts. Both kinds of understanding may appear in the same case. Pricing agreements may be accompanied by the allocation of particular territories or customers; mechanisms are created to compensate firms which lose accounts to other competitors. Rigged bidding cases may be either one shot offenses, in which two or more firms decide who will submit the best bid,[45] or continuing crimes; in these, conspirators allocate a series of contracts over a period of time, taking turns in filing a winning offer.

Antitrust violations are, in general, lengthy offenses. They may last as long as fifteen to twenty years.[46] Defendants usually hold one or more meetings to discuss and implement their agreement. Sometimes these meetings are scheduled regularly for the duration of the conspiracy, especially when routine decisions regarding successive rounds of bidding or allocation of new accounts must be made. Meetings also serve as opportunities to keep colleagues in line. They may be held at a "neutral" site--a hotel suite, conference room, or restaurant--or at the home of one of the defendants. Rarely do such get-togethers take place in a party's offices. Of course, telephone calls often supplement face-to-face communication.

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[45] These are occasionally prosecuted as mail frauds. The sentencing project has two cases in which defendants were charged with both violation of the Sherman Act and mail fraud.

[46] Several reports stated that the activities for which the defendants were convicted had been typical of the industry for decades.

Trade associations play an important role in many of these crimes. Association conferences may provide an arena for the discussion of mutual problems and, thus, a stimulus for their resolution by illegal means. Industry-wide or area meetings may serve to cover conspiratorial sessions or may even become the forum at which agreements in restraint of trade are forged.

Convicted organizations are most often small, closely-held, relatively successful corporations. A handful of large, national firms, here including Bethlehem Steel, Bordens, Brinks, Phillips Petroleum, Schlitz, and U.S. Steel appear, too. The construction industry is represented most frequently in the project's files; ten of 44 cases arose in that sector.

Organizational size and individual indictments are clearly correlated. Smaller, closely-held corporations are generally represented by their principals. Such persons may themselves be the company's founders (or direct descendants of the founders), and are often quite wealthy. When regional or national corporations are involved, a middle class, middle level management figure, often the chief of local operations, has been active in the conspiracy and is indicted. An exception occurs when the conspiracy is nationwide, for in these cases top corporate executives are frequently implicated and, as a consequence, prosecuted. Whether the individual defendants are middle or upper level personnel, one thing is clear: they are the "most impeccable" defendants, the "straightest arrows," in the project's sample.[47]

Competition, real or perceived, and the resulting threat of commercial failure, problems in the industry, and inflation and other difficulties in the larger economy are often cited by convicted defendants to explain their illegal conduct. Many also claim they were not aware their activities were impermissible. It is interesting to note in this regard that the accounts of antitrust defendants typically seek to justify criminal behavior. One encounters relatively few expressions of heartfelt remorse in these reports. Perhaps defendants do not think an apology is necessary, or fear the consequences of an outright admission of guilt for related civil litigation, in which the stakes may be much higher.[48]

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[47] The sentencing project's impeccability index, a composite of 29 background variables describing early family life, academic performance, military and employment history, present living arrangements, attendance at religious services, group affiliations, involvement with drugs and alcohol, and community reputation, bears this out. Mean scores for defendants in each of the eight white-collar crime categories are (standard deviations in parentheses):

mail fraud	3.147 (4.101)	bribery	5.512 (4.011)
credit fraud	3.468 (4.238)	tax	5.671 (4.154)
false claims	3.752 (4.742)	sec fraud	5.964 (3.326)
embezzlement	3.865 (3.710)	antitrust	9.684 (3.400)

[48] All defendants in these cases have been found guilty upon a plea of nolo contendere (lit., "I will not contest it"). This has the same legal effect in a criminal case as a guilty plea, insofar as sentencing is concerned. But it serves only as an admission for the purposes of the criminal case, and cannot be used in subsequent treble damage suits brought by civil antitrust complainants. A plea of guilty in the criminal proceeding, on the other hand, could be used as evidence in a civil case arising from the same set of facts.

Here is one of the cases in the project's files. While one cannot say it is typical in every respect, its features are certainly not unique.

Five linen companies and four individuals from the Miami area were indicted for their participation in a scheme to allocate accounts and to refrain from competing for each other's customers. Under the agreement reached by the parties, which was in effect from 1964 to 1974, newly formed businesses or firms without previous linen service might be solicited by all comers; those having established relationships with one of the defendants could not be approached. Apparently, both meetings and telephone conversations were used to keep the agreement going.

Although a number of strategies were employed to discourage the dissatisfied customers of one conspirator from switching to another, accounts did occasionally change hands. Sometimes businesses were so unhappy they could not be dissuaded; in other cases, overzealous salespeople would, intentionally or not, sign one of their competitors' firms. Records of such events would be maintained, and periodic accountings between companies would be made. The defendant to whom business was owed might be referred to a displeased customer of the party that was ahead, or it might be agreed that one firm would take a certain amount of business from the other.

Organizations and municipalities requesting bids on linen service were treated in like manner. The first bid was wide-open, but the company that had been successful initially would be allowed to win all subsequent bids. The defendant handling the account would notify competitors of its intended bid, permitting the others to submit higher, or what are called complementary, bids or to not bid at all.

One of the indicted individuals, the president of three of the defendant corporations, was considered the leader of the conspiracy by the prosecution. The corporate defendants were primarily family-owned businesses. As in so many of these cases, it is not clear how the government discovered the conspiracy. The Justice Department's investigation of a very similar agreement in the uniform rental industry in Miami (which involved one of the companies indicted in this case) began when a small company complained of harrassment by co-conspirators because it was soliciting their customers.

As this case suggests, the typical price fixing violation involves a few suppliers working together in a market that extends over a relatively limited, manageable geographic area. In quite a few prosecutions, defendants were middlemen, distributing products from the manufacturer to other retail outlets, i.e., operating at a point in the supply chain where tacit coordination is both feasible and rewarding. Further down the chain, at the retail level, the increased number of suppliers to individual consumers may make conspiracy less necessary, and at the same time more difficult.

Despite the obvious impact of antitrust violations, it is often difficult to determine the economic and social costs of such activity. How much more were consumers required to pay? How many honest competitors were forced out of business? These questions frequently remain unanswered. One would expect resulting losses to be substantial, given the relatively extended nature of these offenses.

But sanctions are not severe. Only a few defendants received prison sentences (these were measured in days), and corporate fines did not seem burdensome, or proportional to the economic harm allegedly caused by the offense. Note, however, that virtually all the cases in the project's files were not subject to the increased criminal antitrust penalties authorized by Congress in 1974.

Securities Fraud

Securities frauds are among the most harmful and most complicated, behaviorally and structurally, of the cases studied by the sentencing project. A number of provisions of both the Securities Act of 1933 and the Securities Exchange Act of 1934 are used to prosecute them. Section 17 of the 1933 Act (15 USC 77q) forbids any person, while offering or selling securities through interstate commerce or the mail

> (1) to employ any device, scheme, or artifice to defraud, or
>
> (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made...not misleading, or
>
> (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

And it continues:

> It shall be unlawful for any person...to publish, give publicity to, or circulate any notice, circular...or communication which...describes [a] security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt...of such consideration and the amount thereof.

Section 78j(b) of Title 15 (section 10 of the 1934 Act), in pertinent part, declares it unlawful for any person

> To use or employ, in connection with the purchase or sale of any security...any manipulative or deceptive device or contrivence....

Trading in the stock of a publicly held corporation may violate these rules. Almost all such cases involve over-the-counter issues (in only one instance in my sample did a report clearly state that a corporation's stock was listed on the NYSE or AMEX) and originate in the Southern District of New York. These frauds generally involve a number of co-conspirators, and are characterized by a relatively complex division of labor between players. They are most often committed by relatively small businessmen trying to take their companies public--to sell shares on the open market for the first time. An initial, legitimate attempt to vend securities is frequently made before the principals resort to less honorable methods. One has the sense that eveyone involved is on the fringe--officers of companies no one has heard of, brokers who do not hesitate to push stocks more reputable houses wouldn't touch.

One or more of several strategies may be employed. First, principals of the corporation, or their immediate representatives, may misstate the activities, outlook, or financial standing of their company in its offering prospectus, SEC registration statement, annual report, or the like. Corporate accounting practices may be tailored to support such claims. Second, the price of the stock may be directly manipulated, as defendants controlling large blocks of shares buy and sell among themselves to create the appearance of an active market. Nominee accounts are generally used in such instances; these are accounts listed in the names of purported owners, but actually controlled by undisclosed persons. Third, unreported payments to ostensibly independent brokers are commonly made by corporate insiders to insure that such individuals will tout the stock vigorously to unsuspecting customers. These innocent investors follow the advice of their apparently impartial representatives, buying at whatever price is suggested; quite often, they are purchasing stock that is being dumped by the defendants.

This kind of stock fraud is carried out in order to raise capital for one's company (these are the cases of the relatively honest, but quite desperate businessmen), or to make a quick killing by selling the shares one controls at an inflated price. One of the cases in my sample gives a sense of what is involved. Quite simply, the officers of a manufacturer of modular housing inflated firm earnings in SEC registration statements, annual reports, and related documents, in order to boost the value of their own holdings in the company, and to insure the success of two public offerings of the company's stock. The fraud began in 1969, when a legitimate underwriter told the defendants it would not take the company public until they could show after-tax earnings of at least one million dollars. To inflate reported sales figures, land was "transferred" to a corporate shell and to friends of one of the defendants. In both cases, only a minimal down payment was made, but the entire sales price was recorded in the firm's books. Thus prepared for its public debut, the corporation registered over one million shares with the SEC for sale to investors. First offered at $16.50 per share, the price of the company's stock rose to $34 after just one day. Two of the defendants sold some of their own shares for

$1.6 million and $1.7 million, respectively, during those first 24 hours.

A similar counterfuge was employed in 1971, just before the company was to offer preferred stock to the investing public. Excess housing modules that could not be sold legitimately were instead "sold" for 100 million dollars to a shell controlled by one of the defendants and his business colleagues. Again, the full sales price was included in the reported figures. In addition, a letter purportedly committing the state of Mississippi to purchase 800 of these modules for $15 million was forged by the defendants and submitted to auditors. The offering of preferred stock was a complete success; $20 million was raised for the corporation. Less than a year later, it was bankrupt.

Other offenses do <u>not</u> involve the shares of a publicly held corporation. Objects being sold, all deemed "securities" by the SEC, and hence subject to regulation, include working interests in oil and gas leases, shares in "cattle feeding" funds, mutual funds, or real estate investment companies, student loan promissory notes, investment contracts, land sales mortgages, and even railroad tank cars. What particularly distinguishes cases of this second type, which come from states outside the Northeast, and those involving corporate securities, is the nature of the relationship between defendants and victims. Here, defendants almost always have actual contact with investors; they do the selling directly. Perhaps as a result, the organization of these offenses is less complex. Too, victims are more limited in number and can often be individually identified. In the corporate cases, on the other hand, selling to large numbers of persons is accomplished through intermediaries, and victims generally remain anonymous.

Still other securities frauds resemble simple thefts. In these relatively infrequent cases, money is skimmed from a publicly traded company, mutual fund, or other investment vehicle. Thus, in a case from Detroit, the operations manager of a brokerage firm used customers' funds and his employer's securities to play the market. The defendant schemed alone, had no contact at all with the firm's clients, and caused losses that were fully absorbed by the company he worked for. In every respect, this case looks very much like a bank embezzlement; the defendant used someone else's money without authorization.

<u>Limitations</u>

All research designs are restricted in some fashion. Before the results of this study are presented, it is therefore only fair that its most significant limitations be identified. First, presentence reports are completed for only a handful of those who actually commit illegal acts. Behavior that remained undiscovered, unreported, unindicted, or unsuccessfully prosecuted went unanalyzed.[49] Second, not every arguably white-collar offense was in the sentencing project's collection of cases. For example, bankruptcy fraud was not studied. Neither was

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[49] Most of the cases I studied were developed during the Watergate period and the years immediately following. Now that the fervor which then gripped the United States has subsided, one may wonder whether prosecutorial, or other, decisions in the middle seventies to activate the criminal justice system were representative of those made before that time--or since.

conduct prosecuted at the state level, or in federal districts not included in the Yale sample. The former is perhaps more troubling, for the federal system processes a rather peculiar set of crimes. Only if criminal activity crosses state boundaries or a special federal interest is injured can federal jurisdiction be assumed. Thus, burglary and larceny, two quite common property offenses, do not appear in federal courts unless something belonging to the U.S. government is involved. Bank embezzlements, not other employee thefts, bribery of federal, rather than state officials, and postal theft, not other forms of stealing, were studied at Yale. Finally, only acts defined as criminal received scrutiny. This means, inter alia, that violations of the civil law, and those administrative regulations for which only civil remedies are available, were overlooked.

The problems of undetected and unrecorded crime have always plagued studies of deviance. And decisions to prosecute, which favor cases more easily investigated and tried (Rabin, 1971; Morrison, 1973; Weaver, 1977; Katz, 1979), have undoubtedly shaped the materials at hand, as have sampling considerations and the availability of federal data. That only criminal cases were studied might be deemed more critical, since so much of the white-collar crime literature considers offenses sanctioned at civil or administrative law. Certainly, many such offenses are worth examining. But there are sound reasons, too, for limiting consideration to cases actually prosecuted by the Justice Department, for it is unclear how one is to select noncriminal cases for review. A vast body of conduct, of varying social and theoretical import, is regulated by administrative agencies. A good deal is really quite routine. To try to take all such behavior into account, as Clinard and Yeager (1980) have done in another context, is difficult, and invests much of that behavior with undeserved significance. Further, many see noncriminal conduct as morally neutral (Kadish, 1963). Though different persons would label particular administratively-controlled activities "important," even "morally reprehensible," no real consensus on such issues exists. The researcher thus runs the risk of substituting personal beliefs for societal values in choosing to inspect only certain cases. In short, there seems no ready substitute for the line dividing criminal and noncriminal worlds; it is unclear how one is to identify noncriminal cases worth looking at and others safely ignored.

Restrictions must be acknowledged. Nevertheless, the sentencing project's materials are more informative, and thus more likely to provide much needed insight into the nature of nonviolent economic crime, than those employed by any previous study. Let us begin.

A TYPOLOGY OF WHITE-COLLAR CRIME

The crimes described in the project's presentence investigation reports are either fraud, taking, collusion, or omission. The four categories cut across statutory boundaries, capturing essential similarities in offender conduct and the nature of interaction between perpetrator and victim; they are mutually exclusive and exhaustive of the cases of nonviolent economic crime I have read. Because behaviors within each are homogeneous, and the distinctions between categories made in terms of actual conduct, the typology thus constituted provides a conceptual outline of white-collar crime--a new way of looking at the phenomenon--far superior to the legal framework we now employ. But what do fraud, taking, collusion, and omission mean?

Defendants in fraud cases make an intentional misrepresentation or nondisclosure in order to fool the victim, acting in reliance. The latter does something as a result; a decision is made on the basis of the perpetrator's false display--to join a transaction, give away money, issue an administrative ruling, etc. I have identified three basic contexts in which fraud occurs. In the first, persons or organizations submit phony documents and other materials in a process of formal application and review; organizations thus victimized are persuaded to extend something of value, or make a nonfinancial determination, on the basis of the false information the offender provides. Interaction in such cases is routinized and impersonal; often, communication is entirely in writing. Conduct of this kind occurs in garden variety false statements and credit and lending institution cases, when outside parties file fraudulent applications for government benefits or bank loans. Taxpayers who underreport income, or overstate deductions or exemptions to reduce their annual tax burden, commit the same kind of crime, as do mail fraud defendants who apply for credit cards or insurance from private organizations. All these folk trick organizations into giving up "something for nothing."

Defendants in the second fraud category also convince organizations to give up "something for nothing," but act in a quite different setting. Here, merchandise is ordered and received, but not paid for. Structurally, such cases are not unlike those above; external actors lie to organizations. The nature of interaction between perpetrator and victim is different, however. Organizations do not review purchase orders in the same fashion as they do requests for loans, other benefits, or judgments, legal and factual. The latter are made with documents and accompanying data that, at least in theory, are subject to careful scrutiny; the organization is deceived in the course of its review process. When goods or services are ordered on credit, there is no review process. Organizations simply react, without reflection, upon receipt of the order form. They are defrauded, but on the basis of a lie that remains implicit--the defendant's promise to pay is never kept.

Absence of meaningful review is not the only factor differentiating these first two types of fraud. Interaction can be much less formal in the second. Communication between perpetrator and victim is frequently verbal, especially when both are business organizations. Though all cases of fraudulent purchase come to us labeled as mail fraud, those arising in commercial contexts are often bankruptcy frauds. Goods are bought on credit and resold at once for immediate profit, as principals systematically collect as much cash as possible before leaving the insolvent enterprise behind.

Those who persuade victims to buy "nothing for something" commit a third variety of fraud. Individuals and organizations are here led to purchase things for more than such products are worth. Virtually every offense in this category is conducted by means, or with the assistance, of formal organization. Perhaps this is why many show signs of carefully designed, sophisticated impression management strategies. Frauds of the third kind may involve close encounters between defendant and victim, or proceed on a more impersonal basis, as items as diverse as gold mines, franchises, shares of stock, retirement homes, even carbon paper, are sold en masse. They include mail, wire, and securities fraud cases.

Taking is theft. It may be distinguished from fraud on grounds that its victims do not react to false display or misrepresentation--something is taken from the victim, not given, with (misplaced) reliance, to the defendant. Typically, organizations are victimized by one of their employees in these cases, as workers seize money or other goods belonging to the organization or its customers. Most such cases are prosecuted as bank embezzlement, a few as securities fraud. One should also add that most are comparatively uncomplicated affairs. Only a few demand more than the simple manipulation of funds, records, or equipment.

Other takings do not involve seizure of control so much as illegal retention. Offenders here keep money that has entered their possession lawfully. Again, crimes are relatively straightforward; it is less likely, however, that employers will be the immediate victims of such conduct. Cases in this category are prosecuted as embezzlement, mail fraud and, when withheld income and social security taxes are not sent on to the IRS, tax evasion.

Some takings of money and property are accomplished by force; theft is made possible by abuse of the authority invested in one's position, or by raw economic power, rather than the actor's location in an organization or network of relations. Such takings come from the statutory categories we call mail fraud, bribery, and antitrust.

Fraud and taking may be committed by defendants acting alone or in unison. Collusion--the unforced, hidden cooperation of parties who are supposed to be adversaries or at arms length--demands collective action. In one type, persons who are required to exercise fair and impartial judgment are bought--for a price, they play favorites. Such individuals include government officials, bank employees who knowingly approve fraudulent loan requests, and workers in government and private industry who take kickbacks, directing their employer's business to certain parties in return. These cases are found among those labeled bribery, mail fraud, tax evasion, embezzlement, credit and lending fraud, and false claims and statements.

The consideration for these collusive agreements is monetary; in others, it is mutual restraint, as competitors agree to refrain from competition. Prices are fixed, territories divided, customers and accounts parceled out, bids set in advance. Both the general public and specific consumers may be victimized by such conduct which, prosecuted most frequently as antitrust activity, is also found in mail fraud and bribery cases.

In the classes thus far reviewed, offenders act affirmatively; they lie, cheat, steal, or corrupt. Yet there are white-collar crimes in which the culprit does nothing at all. I call these omissions, for they involve the refusal or neglect of a duty to perform. There aren't many omissions in the sentencing project's files; most prominent are refusals to file tax returns, and to testify or produce subpoenaed evidence. Because such cases are infrequent, I do not treat them in greater detail, concentrating instead on the three really significant white-collar categories. In each of the next three chapters, then, I more thoroughly explore fraud, taking, and collusion.

Chapter III

FRAUDS

Fraud victims are tricked into doing something. They are taken in by a "misstatement of reality"--led to believe that the company's stock is a good buy, that the franchise for sale will be a big moneymaker, that the applicant is indeed a safe credit risk--and they act on that basis. Fraud always involves a misrepresentation or nondisclosure specifically designed to fool a person acting in reliance. One might expect conduct defined so generally to appear in many guises but, when structure and content are analyzed, the frauds in the project's files really form only three categories, each characterized by a different kind of interaction between perpetrator and victim.

In the first of these, interaction is routinized, taking place between one or more external actors and a single victim organization. Outsiders submit materials for formal organizational review; these are processed in a manner specified in advance by the victim. But the defendant's presentation, made in writing, which may be a request for cash, credit, or a determination, legal or factual, is made with false pretenses: it has been intentionally designed to deceive. Such activities are fraudulent submissions.

The second category is structurally like the first; these crimes also involve external actors and a single victim organization. I call these fraudulent purchases, for persons order merchandise but fail to pay their bill. Interaction in this second category may be routine, as when goods are ordered through the mail, or more informal, as in everyday business transactions. Unlike those harmed in cases of fraudulent submission, purchase victims simply react, without reflection or careful review, to the offender's presentation.

Frauds in the final category may be aimed at either individuals or organizations, and often claim many victims. Here, victims are persuaded to buy something. Misled by the way the item is presented, they learn too late that what they now have is not what they thought they purchased. Such crimes are fraudulent sales.

FRAUDULENT SUBMISSIONS

Organizations victimized by fraudulent submissions make a decision on the basis of an outside party's misrepresentations. Some of these decisions concern the transfer of cash or extension of credit; others have no immediate financial implications. All are products of a deceitful request, formally prepared and presented.

Decisions regarding cash or credit are more heavily represented in the sentencing project's collection of fraudulent submissions. Those made by financial institutions falling victim to credit fraud are good examples; false information regarding identity, resources, or collateral is provided to fool the bank into taking the loan applicant for a person (or business) of substance. Appearance, not reality, is important; applicants manage presentations to impress bank officials in just the right fashion, to convince them of credit worthiness, to win approval of undeserved loans.[58]

Take the case of an insurance underwriting company, on the brink of collapse, whose president and majority stockholder turned to a local bank for help. Before doing so, however, he directed that cash on hand be overstated, that the secretary-treasurer simply ignore a bad half million dollar loan, and that other uncollectable debts be entered as accounts receivable (making it appear as though they would be paid momentarily). All this made the financial statements supporting the company's application for its own $450,000 loan look very good indeed. They didn't look quite so good when the company defaulted.

A Brooklyn resident did much the same thing with three separate loan applications to the same bank. Only not so artfully. With each request, the defendant provided false--and conflicting--information concerning his age, address, job, and wife's identity. The bank noticed these disparities immediately and reported the matter to the FBI. A Texan was more successful. He received a home improvement loan of $1850, having shown the bank a fictitious contract for work to be allegedly performed on his dwelling. Another fellow used a false name and offered additional misinformation regarding his address, employment, and assets on five applications, representing himself as the president of a trade company and owner of an apartment building. His immediate efforts netted a total of $57,500. This defendant was also said to have obtained or created driver's licenses, social

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[58] "Impression management" and "presentation of self" are, of course, Erving Goffman's terms; much of this entire discussion is indebted to his work. In particular, see Goffman (1959, 1969, 1974).

security cards, tax returns, discharge papers, and credit cards, as well as phony corporate documentation, to further an entire series of fraudulent loan and securities schemes. He used at least seven different identities to cheat banks of an additional $200,000 or so during the two and one-half years these were in progress.

Obviously, the skill with which presentations are made varies. But it is surprising how little presentational skill seems to matter. Many cases suggest that banks barely check an applicant's signature before opening their vaults. One person, with eight previous arrests, gave a false name and address, fictitious father's name, and phony credit references on an application for a $900 motorcycle loan. The loan was approved. A seven time loser used an automobile as security for a personal loan; he valued the car at $1600 and said it was being used daily. In fact, the heap was rusting quietly on a local used car lot, engineless, and would have gone quickly to the first buyer with a spare hundred dollars. The bank did find out--after it had to declare the loan uncollectable.

Such behavior is not limited to personal loan cases. A group of defendants filed a series of loan applications with Chicago area banks over a two year period to raise funds for their auto insurance business. The loan papers were in nearly perfect order; it was just that each application failed to mention any of the other, outstanding loans the defendants had received. Several hundred thousand dollars was lost as a result. Another person was convicted for stating on a business loan application that he owned three cars, including a late model Corvette, and held title to certain real property. (He owned only a '67 Ford, and the property in fact belonged to relatives.) He at the same time overvalued equipment in his pizzeria by 250%. This entrepreneur was rewarded with a $5000 check from the bank and, eventually, eighteen months behind bars.

While the first case above would suggest that organizations occasionally make use of their employees' talents to tailor presentations more carefully, corporate schemes are, in general, no more sophisticated or daring than those of unaffiliated applicants. Indeed, all these crimes, individual and corporate, are conceptually identical; the relationship between offender and victim, and the behavior of each, are everywhere the same. It is nevertheless abundantly clear that the cases of middle class applicants and those whose loan requests are made either on behalf of organizations or within organizational contexts are quantitatively, if not qualitatively, different from the rest. The "socially presentable" are, in general, accorded a significantly greater degree of trust than those who do not conform to middle class norms, and thus receive larger and more numerous loans over longer periods of time than their less fortunate counterparts. This is most apparent in cases involving corporate actors (who are, I think, presumptively middle class in the eyes of their beholders). One such defendant entered into a factoring agreement with a leading commercial bank in the Southern District of New York. The latter promised to give the firm a percentage of the face value of its invoices, expecting to receive the full amount of these billings once customer payment was actually made. The billings the bank saw, however, bore no relation to actual orders; the company's statements were either inflated to reflect much larger shipments than were in fact sent out, or were simply created--all to suggest that business was booming and to collect as much as possible from willing bank officials. The bank advanced the defendant $1.2 million in seven months. How often would the same bank do this for an individual? Instances in which businesses routinely forwarded phony promissory notes and loan applications to banks on behalf of "customers" provide further evidence of the apparent susceptibility of banks to this sort of commercial ploy. In one case, 47 forged promissory notes were presented to a bank by an insurance company over a ten month period; the bank lost $83,000.

Other prosecutions give evidence of the power of the corporate form. One, from Maryland, involved "double financing" by an automobile dealer; the defendant used the same car as collateral on separate loan applications to two different banks, defrauding them in several months of $400,000. An individual from Georgia who also used the same car as collateral on three bank loans was able to gain only $16,000 in this fashion. Several corporate loan frauds netted hundreds of thousands of dollars; no personal loan case exceeded five figures, and many did not exceed three.

Perhaps the difference in scale between personal and business loans is shown most clearly in the case of a Californian, who applied to the same bank for both a personal and a business loan, offering phony personal tax returns as evidence of his secure financial standing. The personal loan was for $10,000; the corporate loan was for $150,000. Neither was repaid.

The social status of individual applicants is an important factor, too. Most lower class defendants do not even try to substantiate claims regarding assets, employment, and the like. Their applications are thus often rejected immediately. Even when approved, loans to the poor are generally small, considerably smaller than those made to more comfortable individuals. Too, middle class persons are more likely to use the trappings of an occupational role to facilitate criminal behavior. The case of a woman employed as a savings bank secretary illustrates this. Using materials available on her job, this defendant created entirely new passbooks and duplicated those originally issued to her and members of her family. Both duplicate and newly-created passbooks were then used as collateral to obtain a series of fourteen personal loans from another bank. The defendant's employer routinely affirmed that passbooks presented to the lending institution were valid, without really checking. As a result, the defendant received more than $35,000.

The false claims cases tell the same story. Here, too, fradulent applications for the victim organization's benefits are filed by an external actor. While the cases are relatively diverse, those involving middle class offenders in <u>bona fide</u> occupational roles, or the organizations in which such persons work, are far more interesting than those which do not. Consider these rather flagrant examples:

1. Nine medical clinics in New York City, owned and operated by two chiropractors and certain unindicted co-conspirators, but housing over 130 medical providers of various kinds, including doctors and dentists, were the center of a massive medicaid fraud in the early

seventies. Participating professionals were encouraged to refer patients to various specialists unnecessarily (a practice known as "ping-ponging"), to order unneeded laboratory tests, and to submit entirely fictitious medicaid invoices (known as "padding").

Opening the clinics required little cash; usually, $5000 was sufficient. The defendants needed only to recruit physicians and other medical personnel, most of whom never bothered to show up at the centers. Invoices were actually completed by the ex-wife of one of the owners,[51] or a senile doctor recruited for the task. Towards the end of the fraud, the clinics became more shells; even patients no longer appeared.

2. A Baptist church in Georgia, licensed to operate feeding programs for poor, preschool children, cheated the Department of Agriculture of nearly $900,000 between 1969 and 1973. The church accomplished this by overstating the number of meals it served and inflating food and labor costs. For example, the defendants indicated they had distributed 1.9 million meals between October 1971 and July 1973. In fact, as analysis of their milk purchases revealed, only 200,000 meals were served during these months. While cooks were actually paid less than $20,000 over the entire period, reimbursement vouchers filed with the USDA claimed payments of $385,000.

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[51] This defendant kept a careful record of every false invoice; this record, coupled with her testimony, helped make the government's case.

Other first order false statements cases could be described. Again, there is nothing novel; none of these defendants invented new techniques or entered uncharted territory. The benefits of occupation or organization simply permitted them to do the same old things in a big way. To a certain extent, the cases suggest that middle class or white-collar status confers similar advantages. About 40% of the defendants who made false statements on their own behalf were clearly lower class and had prior arrest records. But, as with credit and lending fraud, victim organizations lost much less at the hands of these people than middle class offenders.

Whether prosecuted as credit fraud, or false claims and statements, the cases in which HUD is victimized are analogous. Look how two mortgage companies combined forces to cheat HUD and the VA of approximately $50,000 in a year's time. Prospective home buyers were told to forget about negative credit information when filling out their applications. If, despite this precaution, the credit report for a customer threatened rejection of mortgage insurance, a second report was ordered from a credit reporting agency known for its less than completely thorough research methods; to make things more certain, only a few of the liabilities found by the first agency would be disclosed to this substitute. The other side of the applicant's ledger was attended to, as well. Nonexistent or inflated assets were listed on HUD and VA forms to make each client look like a safe bet. This entire scheme was put in motion by the first company's Seattle branch manager; when the two corporate defendants decided to work together, this individual "lent" the other firm the services of one of his loan officers--to teach the junior partner's employees their new tricks.

Like the "double financing" car dealer who filed a whole series of fraudulent loan applications over a period of months, these organizations operated continuously, taking advantage of the fact that each new customer presented a fresh opportunity to deceive. Individuals normally don't have the chance to persistently defraud. Too, the defendant organizations were able to enlist another corporate actor--the second credit agency--to assist their scheme. Would an individual know the second firm ran a slipshod operation? Perhaps more to the point, could an individual have generated enough business to make it worth the agency's while to be less than painstaking in its credit search? Almost surely not. Though I have here gone beyond the information contained in the case's presentence reports, such speculation is not idle. There must be many instances in which organizational intelligence and economic leverage facilitate criminal activity.

Another fraudulent submission case from the West Coast highlights HUD's apparent vulnerability to such goings-on. Only when a disproportionate number of loans from a single mortgage company resulted in agency foreclosure was it discovered that a California firm was routinely falsifying employment histories and other client information on HUD/FHA documents. I think it worth noting once more that these two corporate designs, and others like them, are really no more sophisticated or complicated than conceptually similar frauds committed by individuals. Whether we say that organizations are trusted more than individuals, or that organizations simply operate on a larger scale, it is true that the crimes of such defendants last longer and cause greater injury than those of isolated men and women.

In this particular case, the harm occasioned by the defendant's conduct was quite serious. HUD forecloses on properties and puts them up for resale when mortgages it has guarenteed become delinquent. Homes for which mortgage insurance has been fraudulently obtained are more likely to go into default for obvious reasons; owners are not really in position to repay their loans. The effects on already marginal neighborhoods of widespread foreclosure are equally obvious; empty, boarded up buildings become more prevalent, breeding crime and a psychological sense of decay.

Abuse of a formal process of application and review is not limited to schemes that prey on banks or federal agencies. Insurance companies, firms issuing their own credit cards, and the like, may also fall victim to such designs, prosecuted most frequently as mail or wire fraud. Here are three examples:

- Acting ostensibly on behalf of the policyholders, a Texas insurance salesman applied for loans on his customers' life insurance policies, keeping the proceeds for himself. The salesman collected $90,000 in this fashion.
- A group of ghetto residents in Chicago became involved in a scheme to defraud a number of health insurance companies. They first obtained as many health and accident policies as they could--one person held 41. Phony accidents were then arranged; in certain instances, signatures or other portions of medical reports were forged. Providers of divers medical services, in on the scheme, kept the defendants under care for prolonged periods. In all, perhaps $200,000 in fraudulently obtained benefits were received between 1971 and 1975.

- A Seattle women used nearly 100 different names, combining them with varied employment and credit "histories," to obtain a flock of credit cards from merchants. Though found innocent--by reason of insanity--on 10 of 12 counts, she was eventually convicted of cheating those firms of $8300.

Certain tax cases also belong in this first fraud category. The same general pattern--external actor, written communication, and organizational victim--appear when a return underreports income, claims too many exemptions, or inflates deductions. Not every case of this type yields the taxpayer a refund, but then, it is not necessary that victims be asked to give away money; it is essential only that the defendant try to fool the victim into acting on the basis of a false presentation, a fabrication of self and surrounding circumstances. When the IRS, relying on false information provided by the taxpayer, calculates tax liability and declares that one's tax burden has been met for the year, it has been defrauded, whether it mails a refund check or accepts a payment of taxes due.

The cases of many tax protestors might be included here, but I would strike these from the rolls of nonviolent economic crime. Though they often involve an underreporting of income or misstatement of exemptions or deductions, such cases are motivated by noneconomic factors, and should be distinguished on that basis. Similarly, defendants who minimize earnings by failing to report illicit income may be categorized in terms of their original offense, as corrupt public officials, embezzlers, drug smugglers, etc., rather than as persons who evaded taxes via a fraudulent submission.

There are many instances in which an organization, generally a government agency, falls victim to an impression management ploy and makes a decision that does not involve the transfer of funds or other valuables on the basis of a fraudulent presentation. Not always prosecuted criminally, such activity is nonetheless widespread. Misstatements regarding company efforts to secure a safe workplace, clean the environment--indeed, any false report or failure to disclose that results in an undeserved finding of compliance with agency regulations belongs here.

Two cases come immediately to mind. An individual trying to import several used cars intentionally undervalued these automobiles on customs declaration forms. In addition, he misstated the autos' model years to avoid costly pollution modifications. The defendant had instructed the foreign shipper to provide invoices showing incorrect model years and prices, in order to substantiate his own false claims. Another fellow arranged sham marriages for illegal aliens, providing stand-in "spouses" for at least 22 City Hall ceremonies. He was convicted in federal district court for aiding the aliens' fraudulent applications for citizenship.

These cases saw no money pass between victim and perpetrator. Sure, they had financial implications--if they did not, they would not be examples of economic crime--[52] but profits were reaped indirectly, from those affected by the victim organization's decision: the buyer of

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[52] The case of the Leavenworth inmate, cited in the previous chapter, did not involve cash or credit either, but was not economically motivated; the defendant wanted to be released from prison.

the first defendant's imported Mercedes, the immigrants who married their way into citizenship. The case of a veterinarian and a rancher who falsely declared to the USDA that certain cattle had not been exposed to disease, is also on point. So are those of two Postal Service employees who lied on their employment applications. One failed to disclose two prior convictions--before stealing 22 parcels during his first three weeks of work. The other, later to file a disability claim for an on-the-job accident, did not reveal a previously treated back condition. In every case, economic advantage was gained as a result of a decision that did not immediately concern the transfer of funds or other valuables.

FRAUDULENT PURCHASES

Victims need not advance funds or credit on the basis of external actors' misrepresentations. There are many cases in which merchandise is ordered, but never paid for. Most of these are relatively uninteresting, one shot offenses, involving defendants from the lower or lower-middle class. Many look very much like fraudulent submissions; external actors make formal, but deceptive, requests of organizations. The line dividing the two categories is most tenuous when one moves from cases like those involving credit card requests to proceedings such as that of a fifty year old man, unemployed for over ten years, who cheated more than fifty companies of some $3500 by ordering food, books, and clothing through the mail without paying. It is crucial, however, that fraudulent purchase forms are not reviewed by the victim organization in quite the same sense as fraudulently submitted applications. Victims reflect (or, at least, should reflect) over presentations in frauds of submission; they merely react to those in fraudulent purchases. Orders are filled without further ado. No supporting materials accompany such orders; no decision on the merits is made after in-depth consideration of intentionally misleading data.

The analytic distinction becomes even more useful when interaction is less routine. This occurs in many business contexts; (see Macauley, 1963, on the informality of business relations). Consider a case of this type, really a bankruptcy fraud, in which an organizational front was employed. A group of defendants in the Los Angeles area formed a corporation to serve as an intermediary between record manufacturers and distributors, and retail outlets. Records and tapes were purchased, on credit, from such firms as Warner-Elektra-Atlantic, United Artists, and MCA. During the first eleven months of its operation, the company methodically built a reputation within the industry as a good credit risk, making partial payments for ordered merchandise. Then, the defendants moved into the "bust-out" phase of their scheme. Increasingly large orders were placed at maximum credit limits; goods thus received were sold on the competitive wholesale market, at prices well below cost. The defendants took the revenues generated by such sales, bankrupting their company at its creditors' expense. The government later estimated that the defendants netted approximately $500,000 for their year's work; they would have made much more had the IRS not placed a tax lien on the firm two months into the "bust out," terminating the fraud by calling attention to the company's tenuous financial condition.

The case is interesting in three respects. First, given the nature of business affairs, one may guess that communication between these defendants and the record companies they tried to rip off was much looser and more free wheeling than that which typically takes place when written forms are transmitted by mail or processed bureaucratically. Second, like other fraudulent purchases, this case claimed at least several victims. Fraudulent submissions generally injure only one party; those instances in which more than one victim is hurt do not give evidence of a single overarching plan, but rather appear as discrete, unpatterned acts grouped together in time. Finally, the case is apparently typical of bankruptcy scams (Defranco, 1973; Mack, 1975; Bequai, 1978; Levi, 1982). It is here that one of the major crimes not included in the sentencing project's sample thus belongs.

FRAUDULENT SALES

Frauds of submission involve the abuse of a formal process of application and review. They have a single, specially chosen target; this victim, always an organization, makes a decision on the basis of materials it has either provided or requested--an unwitting decision, for the materials it considers have been falsely prepared. Frauds of purchase victimize organizations, too, but do not involve formal application or review procedures. Requests for goods or services are not generally accompanied by supporting documents or information about the other party; rarely are they accorded the same kind of orderly examination applications for welfare benefits, bank loans, medicaid reimbursements, or tax refunds might be expected to receive. They are simply acted upon, without reflection. Fraudulent sales are different still. External actors deceive, but do so almost exclusively behind organizational cover. Aimed at either individuals or organizations, fraudulent sales more frequently claim many victims--scattered, taken in, perhaps simultaneously, by a single impression management device. They resemble submissions, for victims act only after judging a presentation, sometimes a very detailed, well-controlled presentation, put on by dishonest performers. And they look like purchases in the sense that interaction does not grow out of a formal review process and is thus permitted to evolve in a less constrained, more unpredictable fashion.

In this final fraud category, victims are persuaded to buy something. Deceived by the way this item is presented, they pay too much--far more than actual value. Different goods or services may be involved; in every case, they are found wanting. Indeed, in some, they may be found not to exist. Two men, for example, established a firm to sell gold coins, silver bullion, and other precious wares. They paid for advertisements in the _New York Times_ and _Wall Street Journal_, and broadcast commercials over local radio stations, collecting nearly a quarter of a million dollars during the six months they were in operation. Only a handful of customers actually received anything.

Such activity is also found in the corporate world, as two companies needing immediate business loans learned in the Southern District of New York. After initial attempts to secure funding from ordinary commercial sources failed, the companies contacted the defendants, a group of "financial consultants," who promised the two firms "financial guarentee bonds." These were supposed to make it easier for the victims to gain bank support. The companies were required to make advance payments; a total of $16,250 was forwarded to the defendants over the next several weeks but, of course, the victims never received a thing.

While this particular operation was a relatively small affair, its ringleader was also involved in two similar schemes of much greater proportions. In one, the defendant, posing as a bogus investment firm, offered to sell blue chip securities to victims, permitting these organizations to use such stock as collateral for the business loans they required. Victims were induced to make advances of up to $200,000; a total of one million dollars was collected by the defendants before the fraud ran its course. In the second case, the defendant and others presented themselves as a well-financed consortium, able to make commercial loans to those who could not obtain more conventional financing. Several "banks" and "investment companies" were created to attest to the consortium's stability. Advance fees of 2% were required. In one year, the defendant and his colleagues collected between 1.5 and 2 million dollars (apparently while the defendant was on trial in, and then appealing, the first of these three cases!).

As I have already indicated, the work of such career fraud artists is not infrequently found among offenses of this sort. It is more common, however, for such worthies to resort to schemes which victimize many dispersed, unconnected individuals. Take the case of two Atlanta gentlemen. They offered franchises in two different companies through newspaper advertisements in several major American cities. The ads promised annual earnings of $100,000 upon an initial investment of only $10,000; franchises in one concern were supposed to lease all kinds of office and home equipment--the second outfit had purportedly developed a special method for controlling utility expenses in business and industry. Funds from franchise sales were routed directly to a holding company the two defendants had created. In a year and a half, one million dollars was collected. The two corporations in which franchises were sold were, to be sure, not really functioning; at no time could they have performed as promised. Immediately after conviction in this million dollar fraud--so quickly, in fact, that the probation officer was able to note their activity in the original presentence report--the two began to run the following in newspapers throughout the country:

WE NEED A $100,000 CALIBER INDIVIDUAL

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WOULD YOU:

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like a business with immediate cash income;

requires no travel, week-end or night work?

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Handle a patented product written up in Newsweek, etc.--

that is approved by Federal Government and will be a

multi-billion $$ industry in the near future?

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Like a protected area--to participate in profits on
national accounts in your area set up by the company?

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Live comfortably on $100,000 per year?

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Invest $15,000 to own your own business
(which is secured by inventory, training, etc.)
that is needed by everyone in your area?

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IF YOUR ANSWER IS YES:

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Call collect or write:

Fraudulent sales commonly rely on misleading advertising. Illustrative cases include those in which oil and gas wells, plots of desert land, and shares in many different, albeit worthless, companies were sold exclusively through newspaper and magazine ads. Commercial space in periodicals or other media is not the only means relatively impersonal, large-scale frauds use to reach victims. In many securities cases, for example, brokers serve an identical purpose. Sometimes they do so knowingly, having been bribed to tout the virtues of a particular offering. In other instances, they are themselves bamboozled by the same misrepresentations that dupe investors (though they may not lose any money of their own).

A grand stock fraud witnessed both kinds of behavior. It began with an agreement by the scheme's two primary figures to gain control of a dormant shell corporation (one that had ceased operations and was without assets), and to reorganize it with Industries International (II), a small machine shop in Littletown, Colorado. First, detailed knowledge of SEC rules (and how to get around them) was used to give the defendants control of virtually all tradeable II shares. Under Commission Rule 133, the merger of a publicly-held, registered company and one, like II, that is in private hands and unregistered, creates a special class of tradeable stock in the surviving offspring. This "Rule 133" stock, controlled by the owners of the old, public firm, can be transferred without restriction or registration. The real beauty of the procedure is that while Rule 133 stock represents only a small fraction of the shares issued by the new enterprise, they are the only ones that can be marketed. Thus, when the defendants, who had already purchased large quantities of the public shell's stock in the names of various nominees, reorganized their company and Industries International, they wound up with secret control of the only shares that were tradeable. And they could sell them to investors without making any of the disclosures normally required by the SEC registration process!

In fact, the defendants' activities violated Rule 133's own terms. No one affiliated with the surviving company is allowed to sell shares to the public, whether or not such shares were created pursuant to Rule 133. The use of nominees hid the defendants connection with II, however. Additional camouflage was provided by the proxy statement filed to support a petition for Commission approval of the merger. The statement did not mention the defendants' names, well known to SEC enforcement personnel after similar escapades in the past, let alone their roles in the creation and planned distribution of II stock. (A fraudulent submission!)

These steps were enough to start the ball rolling, but were not by themselves sufficient to establish a market for Industries International securities. That was a relatively straightforward task. During this stage, the defendants touted the stock to a group of brokers at a luncheon, telling them the company was doing phenomenally well (it was on the verge of bankruptcy). One broker was bribed (with 50,000 of the newly created shares) to peddle the stock of this unknown, worthless company. False financial statements were created; an alcoholic accountant who would, in the words of one of the conspirators, "give him any kind of statement he wanted" for $500, was hired. Finally, additional brokers were paid (with both stock and cash; such bribes were concealed with a bewildering trail of paper) to rig the price at which Industries International was being traded.

As a result of these shenanigans, the two leading defendants and several co-conspirators were able to sell shares under their control at a considerable profit. Indeed, in the four weeks trading in Industries International stock was permitted (an investigation was launched almost immediately by the SEC), investors lost more than 1.5 million dollars.

Coverup played an important role in this case. Incriminating documents were destroyed and false ones substituted. In at least one such instance, a postage meter was "fixed" so that dates on attached envelopes would substantiate the defendants' line. As already indicated, bribes to brokers were intentionally concealed. One of the major actors instructed subpoenaed witnesses not to testify before the SEC or supply the Commission with requested materials; both primary figures perjured themselves in Commission testimony.

How should such activity be classified? I suppose refusal to testify or produce documents must be deemed omission, but other coverup practices seem species of fraud, for they involve false displays intended to convince a victim of some misstatement of reality. Since most take place in the context of official requests for honest information, they should perhaps be labeled fraudulent submissions; phony materials are presented to a decisionmaking organization for review. This is the case whether such materials are in written or, as with actual testimony, oral form.[53]

Frauds depending on impersonal communication or the use of intermediaries may be contrasted with schemes proceeding on a face-to-face basis. The securities case of the defendant known as the "one-armed bandit" (so-called by federal enforcement officials because he was born without a right hand) is typical. During an eleven month period, this defendant defrauded 65 persons of $285,300, selling "working agreements" in oil and gas wells. Using a high school football coach with a reputation for honesty to set up groups of potential investors, the defendant made his sales pitch at a series of

[53] It is interesting that coverup and related activities obstructing the administration of justice may be prosecuted as conspiracy to defraud the United States, 18 USC 371 (Goldstein, 1958). It is at least equally likely, however, that such conduct will be termed obstruction of justice, perjury, or the like. Note that coverup is apparently not thought of as mail fraud or false statements; I found no cases in those categories focusing specifically on this kind of activity.

meetings in victims' homes. After outlining his alleged background in both Swiss banking and natural resources recovery, the defendant told pigeons that his company's oil wells were already in production, and that leases on coal-laden properties were in hand. (Neither was the case.) In addition, victims were led to believe that a corporate subsidiary was active and profitable; it was, in fact, a dormant shell. Pamphlets and brochures were distributed to substantiate the defendant's claims.

Twenty-five thousand dollars bought one percent of all oil-related profits and 10,000 shares of the defendant's company.[54] Though a portion was used to create the appearance of corporate prosperity, most of this money went directly into the con artist's pockets.

Between face-to-face interaction and the impersonal use of mass media lies a broad spectrum of possibilities. Direct mailings are often employed. Con artists may also call on the telephone. In a case prosecuted in Chicago, but which involved an operation having offices in several large cities in North America, fourteen defendants (twelve individuals and two corporations) were convicted of using deceptive telephone solicitation methods to sell carbon paper. The firms victimized in this four year, multi-million dollar fraud were subjected to a variety of standardized, misleading, but apparently very effective sales pitches delivered by the defendant organizations' employees. All were intended to convince businesses that carbon paper had previously been ordered, although it really had not, or that companies had ordered

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[54] Customers did actually receive unregistered stock certificates, but not the working agreement contracts.

much more carbon paper than was actually the case. Sales personnel kept careful records indicating who had been previously contacted at the victim firms, which of the misrepresentations had already been used, and which of several fictitious names had been employed by the caller. They received initial instructions and a demonstration, as well as periodic pep talks, from the president of the convicted companies, a product of an English working class family who ran the entire show from his country estate in Ontario.

A California defendant did much the same thing, devising tactics intended to mislead legitimate businesses into believing they had already ordered advertising in his alleged publications. Those contacted--by mail or phone--were told that previously ordered advertising had to be paid for or now renewed. Invoices were routinely mailed under various sham corporate names for advertising that had never been authorized. "Orders" would be billed several times, or would be billed by more than one of the defendant's "organizations." The name of an employee at the victim business would be placed on the invoice to support the claim that advertising had actually been requested.[55]

Certain frauds employ a full range of communication techniques. Rio Rancho, the "largest land fraud in American history,"[56] is a good

[55] One of the defendant's underlings later established his own, similar business after the demise of the defendant's operation. False billing schemes of all kinds are apparently rather common. According to the presentence report, perhaps eighty operate at any given time in Southern California alone!

[56] This, according to the presentence report for the case.

example.

Rio Rancho was formed by its parent company, the Amrep Corporation, in August 1961. From that time until the middle seventies, it marketed parcels of land in New Mexico, using direct mail solicitation, advertisements in newspapers and magazines, visits to the homes of interested persons, and sales presentations of various kinds. These parcels were carved out of 91,000 acres near Albuquerque, forming a "master-planned community" of approximately 86,000 lots; 77,000 of these were eventually sold to nearly as many purchasers. Total sales exceeded $200 million.[57]

Prospective buyers were told their property would be a unique investment, for Albuquerque could grow only in the direction of Rio Rancho land. In fact, by 1965 it was clear--to the defendants, if no one else--that the city would not expand that way. The vast majority of parcels remained unimproved desert, miles away from civilization.

Of Rio Rancho's approaches, sales pitches delivered at receptions across the country were perhaps the most successful. After-dinner talks would be accompanied by brief films or slide shows about the future community; descriptive literature was distributed, too. Eighty to ninety percent of Rio Rancho business in the New York City metropolitan area, for example, was generated at such get-togethers.

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[57] The land had been purchased originally for $180 per acre; the price of individual tracts varied from $3500 for the typical half-acre home lot to as much as $11,800 for one acre.

Smaller, though structurally similar, frauds may also employ a variety of means, personal and impersonal, to reach and deceive victims. Promoters of shares in an abandoned Utah coal mine arranged for a a bus trip to the mine for potential buyers and representatives of the business and general media, fooling the former into believing the mine was active, and causing the latter to publish the defendants' misrepresentations for the edification of a wider circle of unwary investors.

The examples in this discussion of fraudulent sales were all prosecuted as mail and securities fraud. But activity of the same sort occurs in other arenas. False or misleading advertising, no matter what the product, and short weighting and other mislabeling by merchants have the same structure--a single fradulent operation victimizing many discrete, unconnected actors. In the criminal cases studied by the sentencing project, very obvious differences between the object "for sale" and the thing actually purchased exist--gushers are dry holes, successful companies are bankrupt, garden villas are empty desert. The gap narrows in contexts not generally considered criminal, such as the cases of potentially misleading advertising often corrected by the FTC, where intent to defraud cannot be inferred with certainty from the circumstances. Like their criminal counterparts, civil sales frauds may proceed impersonally, in typical mass marketing situations, through intermediaries, as when consumers buy four-wheeled lemons, or on a more personal basis, in local outlets that practice bait and switch or simply vend shoddy merchandise.

Fraudulent sales are more likely to give evidence of well developed impression management strategies than the frauds treated earlier. In many, we find extensive preparation and firm control of the victim's perception of the offenders and their environment. This says a good deal about both the vulnerability of organizations in the routine transactions labeled fraudulent submission or purchase,[58] and the strength of the organizational form in perpetrating fraud; all of the extensive, very injurious schemes in the sales category were carried out by persons who had established formal, seemingly legitimate organizations. More that just a letterhead was created to lend an appearance of corporate respectability in these cases; offices with sales personnel and the other accouterments of the modern commercial workplace were set up to convince potential victims of the organization's legitimacy and the veracity of its sales pitch. Indeed, in the very best cases, where guile and sophistication approach or surpass that exhibited in the legendary "big store" cons (Maurer, 1940; Leff, 1976), the imputation of illegitimacy is very problematic until the "play" has run its course.

Consider the history of development at Rio Rancho. The first model homes were built there during April 1962. A year later, the first residents moved in. By 1966, Rio Rancho had its 100th family; by 1970, its 500th. In 1972, the Bank of New Mexico elected the president of Amrep to its board of directors. In two more years, Rio Rancho had

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[58] Several of the fraudulent sales, including the "great carbon paper" case, point to the susceptibility of organizations in other contexts, too.

grown to a community of 5000, complete with an eighty unit motel, eighteen hole golf course, private country club, full service shopping complex, two recreation centers, an auditorium, a public school, a library, swimming pools and parks, a medical clinic, a number of commercial buildings, an industrial park whose occupants employed 750 persons, two banks, five churches, and a convent of the Felician Sisters.

During its years of greatest activity, Amrep employed a national sales force of between six and eight hundred men and women, most of whom worked full time. Nearly one hundred were employed in the New York City office, Rio Rancho's largest. Metropolitan area headquarters were located in a Manhattan office building bearing Amrep's name. Criminal indictments were handed up in 1975, but even after trial and conviction, management continued to insist that lots represented sound investments and that development would continue as planned, with five hundred new homes annually. Need one be astonished that so many honest souls wanted to become a part of Rio Rancho's "master-planned community" in the sun?

THOSE WHO DEFRAUD

The careers of fraud defendants exhibit regularities as striking as the crimes they commit. Individuals who file fraudulent submissions on their own behalf very often come from economically and psychologically deprived backgrounds. Products of broken, lower class homes, in frequent contact with the law, their lives reflect the social and personal pathologies associated with being poor. It is thus not surprising they most often cite financial difficulties when asked to explain their conduct. The larger requests of organizations, on the other hand, are in general made by older, better educated persons, having no history of legal entanglement. These defendants blame organizational and other business problems, or the bad faith of colleagues and employees when justifying untoward behavior.

I read too few fraudulent purchases to do much more than speculate about the kind of person who commits such acts, but the pattern in these cases seems to follow that of fraudulent sales. Many of the defendants in the more run-of-the-mill sales cases look like those convicted of making fraudulent submissions on behalf of organizations, having led relatively stable middle class lives until their misadventure with the law. Those in subordinate roles claim lack of awareness, inexperience, or a belief that their activity was legitimate. Disclaimers aside, one has the sense that these men and women got caught up in a collective enterprise and were carried forward by the social momentum group life provides. Principals in these smaller and middle level sales frauds speak less often after conviction; when they do, they mention financial pressure, business adversity, the disloyalty of coworkers and, again, imperfect knowledge of the law.

Quite a number of the larger fraudulent sales are designed by professional con men. There may be a common family constellation or career pattern among this group, but the presentence reports are not detailed enough for one to specify it precisely. If such persons have difficulties in early life, these certainly carry over to adulthood;

marital discord, alcoholism, and records of minor, as well as major, arrest appear more often than one would otherwise expect. The masterminds of the Industries International affair had both served time for similar offenses in the past. So did one of those involved in the music industry bankruptcy fraud. In fact, at least one-quarter of the primary actors in major sales frauds did not fit the traditional image of the "clean" white-collar criminal, having been already indicted for significant nonviolent economic illegality; several of those who had not were at least suspected of similar conduct by U.S. Postal Inspectors or the SEC.

SUMMARY

This chapter has discussed three distinct varieties of fraud. In the first, an organization is victimized by outside persons who take advantage of regular application and review procedures. The organization parts with cash or credit, or makes a nonfinancial decision on the basis of a fraudulent submission filed by external actors. The next kind of fraud is structurally similar; organizations are again cheated by requests from the outside. But here the organization does not review the requests it gets so much as it reacts to them, unthinkingly filling orders for merchandise that will never be paid for. Because such cases often arise in customary business contexts, interaction between perpetrator and victim is less formal than when fraudulent submissions are filed.

In both fraudulent submissions and purchases, there are significant differences between the offenses of individual actors and persons working in an organizational setting. The last fraud category is populated almost entirely by organizational crimes, however. In these, individuals or organizations are victimized by a single sales ploy; they are tricked into buying something for more than the product or service is really worth. Patterns of interaction are more diverse and, while they may in theory claim only a limited number of victims, frauds of sale often injure many parties over a wide area. Too, they frequently manifest comprehensive, technically sophisticated strategies of deception, and are more interesting, in this respect at least, than many fraudulent submissions or purchases.

Can the three categories be neatly classified? Not in terms of victimization; fraudulent submissions harm organizations, but fraudulent purchases and sales injure organizations and individual men and women. Nor by reference to mode of commission; while frauds of sale are nearly always organizational crimes, submissions and purchases may be carried out by individuals or corporate groups. Interaction is formal when submissions are made, less rigid when sales are completed, and somewhere in between in the case of purchases. Victims reflect more fully over the presentations made by those who commit frauds of submission and sale, but simply react to the requests of fraudulent purchasers. There is no pattern. This typology of fraud does not fit neatly into any two-by-two array; each definition depends ultimately on behavioral content and, to a lesser extent, on the context in which such behavior occurs.

I turn next to the white-collar crimes I call takings. I begin by explaining how taking and fraud differ.

Chapter IV

TAKING

Taking is theft. Though takings may be accompanied by deceit, they are not frauds. Victims are not persuaded to act; something of value is taken from them, not given up willfully in response to misrepresentation or false display. In takings, money or other belongings are seized (or retained) by persons helping themselves to someone else's property.

Takings depend on abuse of one's position within an organization or relational network. Some hinge more on violation of the trust accorded offenders, others on abuse of the power implicit in offenders' roles. Most of the former are carried out by persons who steal from the organizations they work for. Such persons usually act alone. Their conduct varies in complexity, and in the following discussion I distinguish very simple thefts from relatively sophisticated ones. I next consider cases that might be more appropriately described as keepings, rather than takings: those where funds come into one's lawful possession but, unlawfully, are never released. Here, the immediate victim is often not the defendant's employer, but a party at one end of a cash flow. Finally, if takings contingent on trust violation may be said to resemble the work of pickpockets--persons whose thefts depend on cunning and dexterity--then others, turning on the misuse of power, look like street crimes where a gun is held to the victim's head. Such activity in the white-collar context amounts to extortion.

SIMPLE TAKINGS

Most of the takers in my sample worked in a bank. And as I indicated in chapter two, most embezzlements are really quite straightforward. One defendant, employed as a teller-trainee, simply took $7550 from his register, went to lunch, and didn't come back. He was discovered by the FBI seven weeks later, working in a nearby liquor store. Another fellow put $18,000 in a brown paper bag before departing. He travelled in Europe and Canada for nearly a month, spending some $7000 of the loot. The balance was recovered when the defendant was finally arrested by Canadian police.

These cases were committed instantly; the many who do not abscond invite no attention, and it is thus more likely that even simple embezzlements will continue for some time. A surprise cash audit at a Maryland bank found a teller $900 short. She admitted "borrowing" money from her drawer for two months to help meet household and other expenses. A $9100 theft in Texas remained undiscovered for almost four weeks; the defendant kept the shortage hidden by falsifying daily cash sheets.

Crimes only slightly more sophisticated may last a long while, too. A teller was permitted an entire year to misappropriate $2450 by forging customers' signatures on withdrawal slips. Only when someone had the interest posted on her account and found an entry for a mysterious "no book withdrawal," did this person come under suspicion.

The defendant readily admitted guilt, saying he hated his job and was just "getting even" with the bank. A loan officer in New York City embezzled $4829 in four months by making several withdrawals from an internal account used to issue the bank's own checks. It took twice four months to discover what he had done. It didn't take quite so long, though, to learn that ten $50 traveller's cheques were missing at a Los Angeles bank. The culprit, a "note teller," had worked in the traveller's cheque station for two weeks in September and had then gone AWOL. Her theft came to light only when a year-end audit revealed the cheques were gone.

Embezzlers who sit at desks can take even more time than those standing at "windows." One at a Georgia bank made nearly a million dollars in four years by issuing loans in the names of his wife, father, son, and other persons, real and fictitious. Most were for $5000; anything greater would have been routed to the bank's executive committee for approval. Even so, larger ones were occasionally authorized without the committee's knowledge. Recipients' signatures on promissory notes were forged by the defendant or, in certain cases, by one of his creditors, also a bank customer. Loan proceeds financed the defendant's sizeable cattle ranch, deeply in the red.

A bank vice-president resorted to an identical ploy, issuing a $3000 loan to someone who didn't exist. The note matured when the defendant was on vacation, however, and the bank's president, wishing to initiate collection proceedings, tried to locate the debtor. The address on the loan application was the same as that of a defunct corporation whose officers included the defendant. Faced with this evidence, the vice-president left a check signed by the "borrower" for the full amount of the loan in the bank's night depository, then quit his job.

Not all simple takings are prosecuted as embezzlement. But however prosecuted, their outlines are always the same. The least complicated involve the direct theft of cash or other valuables; others require that the defendant "create" money, using forms available on the job. Remember the SEC case discussed in chapter two, in which an employee of a Detroit brokerage house used customer funds and his firm's securities to make personal investments? That was a relatively simple taking committed in a nonbanking context. While the presentence report was not especially detailed, the defendant apparently did not maneuver funds or tamper with accounts in more than a very limited fashion. A false claims case that saw a Georgia attorney steal $300,000 from an escrow account was similar. Funds received on behalf of clients to pay existing first mortgages and miscellaneous closing costs were instead used to repair an airplane, buy a car, and settle the defendant's tax bill. (The attorney was convicted for falsely certifying to the VA and FHA that their loans had been disbursed properly.) A second SEC case involved a corporation's stock transfer agent. No loan forms handy, he issued the firm's stock without authorization. Friends helped sell 200,000 of these shares through a local investment firm, bringing in a cool $677,000.

The analytical distinction between fraud and taking is important, though sometimes tenuous. Note that victim organizations in all these cases did not make a conscious decision to part with funds. Superiors and colleagues were simply not aware of the defendant's activity. One may say, of course, that victims were lulled by a successful presentation of everyday regularity and calm; if they suspected the defendant, they would have tried to prevent the crime. Perhaps the unexceptional appearance of matters is occasionally further promoted by the defendant's reports, oral or written, designed to support the assumption that everything is running along smoothly--the presentence reports generally leave such details unstated. But even if this were true, it would still be the case that victims did not knowingly "hand over the goods," as they do when persuaded to buy something less valuable than it seems, or to approve ostensibly deserving requests for funds or merchandise. The victims of fraud make a conscious decision in direct response to the defendant's false display; they give at least temporary consent to the transaction at hand. When valuables are taken, victims do nothing at all. Certainly, they don't assent to the defendant's conduct. Interaction between perpetrator and victim is of an entirely different character; either there is no real communication, or what interaction does take place is peripheral to actual criminal activity, often coming after-the-fact.

NOT-SO-SIMPLE TAKINGS

Though not terribly sophisticated, certain takings are more elaborate than those so far presented. Such offenses frequently involve the manipulation of bank accounts. Three examples give one a sense of what is at stake:

- A "new accounts" teller got in the habit of withdrawing limited amounts from a particular customer's account, that of an elderly woman who did not pay much attention to monthly statements. Funds were at first quickly replaced, but this became impossible as takings grew increasingly large. To cover shortages, the defendant began to divert funds from other accounts, and was caught when one depositor noticed that her initial balance on one statement did not agree with the previous month's final figures. Though more than $10,000 had been moved around in two years, the bank lost only $2100.
- An assistant branch manager embezzled $8300 in something under three years by drawing checks on customers' accounts and depositing the proceeds in her own. To conceal this activity, she debited and credited the holdings of still other persons, ultimately charging the withdrawals against several accounts which were otherwise dormant.
- In four years, the vice-president of a Chicago bank embezzled two and a half million dollars, making withdrawals from a few targeted accounts, depositing such funds in a corporate account for which he was responsible, then transferring the money to a second bank. Though no details were given, the presentence report implied the scheme was fairly sophisticated. It must have been, for it was discovered only after one customer complained that his account was $600,000 short.

As the foregoing suggests, the takings of middle and higher level bank officials are, in general, conceptually little different from those of tellers and clerks. What tellers accomplish with withdrawal slips and bank books, officers do with the materials they have immediately at hand. There isn't much difference between the completion of fraudulent loan applications, and blank traveler's cheques or money order forms. When a loan officer forges a customer's name on an application (whether the customer exists or not), does he or she do anything that a teller, who forges a signature on a withdrawal slip, does not? Cases involving bank officers look familiar when one has read those of their subordinates; direct theft, account manipulation, and forgery are activities which occur at both ends of the bank's job hierarchy.

Too, highly placed embezzlers evidence no more guile or sophistication than do tellers and clerks. The abuse of trust by those in positions of authority makes large embezzlements possible. As one moves up the corporate ladder, permissible loan limits grow larger, one has access to more important accounts and, of course, one is less closely supervised. These factors, not superior cunning or the availability of advanced technology, make embezzlement at higher levels more profitable.

Why call these cases taking rather than fraud? After all, several involved deceit--false cash sheets, rearrangement of funds, forged promissory notes. But, again, victims did not make choices on the basis of such deception; lies did not persuade, they perplexed. By the time takers resorted to fraud, they had already gained their immediate objective--money in hand, they needed only to divert the attention of onlookers. Impression management did not win a change of heart, or the victim's willing decision to enter into a transaction with the defendant. The latter's crime was committed when readily available funds were deliberately taken. Although they may be deceived and think no theft has occurred, victims of takings are not tricked into giving money away. Their money is stolen.

Compare the case in chapter two of the U.S. Marshal's Service employee, padding time sheets recording the hours his fellow prisoner guards worked. There, fraud was committed entirely within an organization; the false time registers were reviewed and acted upon at other levels of the Marshal's Service. This occurred again when an insurance company adjustor and one of his customers combined to file fictitious claims on the latter's tenant/homeowner policy. The adjustor put his seal of approval on claims he knew to be false, but it was someone else in the insurance company who decided to pay them.

The Texas insurance salesman cited in chapter three who filed false requests for loans on his customers' policies provides a final example. Like a bank loan officer, the defendant created money by writing loan applications, but not before he first convinced someone else in the company the applications were real. That's something the average bank officer needn't worry about. In most cases, no presentation is required; there's no need to win over another party exercising independent judgment, because defendants have immediate access to cash or other valuables and simply help themselves. Their conduct is thus taking, not fraud.

KEEPINGS

The difference between keepings and other takings is suggested by the words themselves. Whether simple or complex, individual or team efforts, the takings reviewed thus far required that offenders seize and establish illicit control. When money is kept, funds that come into one's possession legitimately are illegally retained. Cases in this category generally do not claim as their immediate victim the defendant's employer, although that organization may eventually make good its servant's misdeed.

Boundary-spanning employees often hold onto monies that are coming into or leaving their firm. Tellers who skim deposits keep. The vice-president of an upstate New York bank did, too, stealing $11,841 over three years by diverting customers' personal loan payments. He was found out when a subordinate noticed that three student loans were apparently overdue. Not satisfied with the defendant's assurances, she notified another bank officer, who quickly discovered what had been going on.

An insurance salesman for Equitable Life committed a similar crime. He convinced a number of his policyholders to redeem their policies for new insurance. Clients, mailed refunds checks by the company upon redemption, gave them right back to the defendant to pay for the new policies. But the checks were never passed on; they were deposited in the salesman's own bank account. Why wasn't this a fraudulent sale? Because the insurance man didn't make a "nothing for something" sale; new policies would presumably have been forthcoming had Equitable actually received payment (and, in fact, the company did make good as soon as it learned what had occurred).[59] The defendant simply kept some money that had legitimately entered his temporary possession.

A defendant mentioned briefly in the second chapter, who failed to send off rent monies she had collected in a HUD housing project, worked for a company hired by the government to manage the property. Others who keep funds collected on behalf of federal agencies are the employers who do not remit social security and other taxes withheld from workers' paychecks. The owners of a small lounge in Baltimore, a prosperous cotton business, and an auto body shop all neglected to file proper quarterly FICA and withholding forms or annual unemployment returns. A doctor did, too.[60]

Funds outward bound were kept by a banker who forged the payee's signature on a rebate check and cashed it himself, rather than forwarding it to the intended recipient. Tellers are frequently implicated for comparable activity. In a case unconnected with the broader Rio Rancho prosecutions, that company's director of New York City sales and his assistant stole dissatisfied customers' refunds. The two often mailed only the buyer's principal, keeping the interest such principal had earned; on other occasions, only a few of many

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[59] The burden in a taking always falls on the organization whose workers are stealing (or some third party insurer who stands in for the victim organization). With fraud, the actors who are fooled (e.g., the buyers) must shoulder all losses. The pain of embezzlement is thus absorbed by banks and insurance companies; any injury that might have been inflicted on individual policyholders was here borne by the defendant's employer.

[60] Defendants are sometimes convicted for failing to deposit withheld funds in special IRS bank accounts.

checks actually due would be returned.

Here, as before, overtones of fraud may be heard. Those expecting to receive are often the victims of lies. But they haven't decided to relinquish their money to defendants; it's been stolen, even if they don't know it.

EXTORTION

Money may be taken by guile or force. In the white-collar arena, force does not grow out of a gun barrel, but from the authority one has. In cases already discussed, position afforded defendants a vantage point from which to steal--it allowed immediate access to a flow of money or the means to channel that flow in a more convenient direction. In certain instances, however, the authority invested in one's position, rather than its location in an organization or other matrix of relationships, permits one to steal. By authority, I mean what Weber intended Herrschaft to designate, "the probability that a command with a given specific content will be obeyed by a given group of persons" (Weber, 1922/1947:152).[61] And that's just what happens in cases of extortion; a command--to give over one's property--is obeyed.

An administrator employed by the general contractor building a nuclear power plant in Maryland used his position to extort money from subcontracting firms. The defendant demanded kickbacks before awarding

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[61] Roth and Wittlich translate Herrschaft as "domination" (Weber, 1922/1978:53). Henderson and Parsons borrowed "imperative control" from Timasheff's Introduction to the Sociology of Law, but Parsons himself suggested in a footnote (Weber, 1922/1947:153) that "authority" would be an accurate and less awkward rendering in most instances.

subcontracts, or threatened labor delays and other bureaucratic headaches if he were not paid off. Convicted for tax evasion, this subject failed to report nearly $300,000 in illicit income during 1971 and 1972; he also had victims make improvements on his home, including the installation of a swimming pool and marina. Originally purchased for $45,000, the property's market value rose to $340,000 as a result.

The defendant did not receive bribes directly. Disguised with labels such as "for consultation" or "warehouse space," they were first deposited in bank accounts opened in the names of fictitious companies by the defendant's friends and relatives. These willing souls had also been asked to sign blank checks in advance; the checks were used to transfer bribe monies from the phony bank accounts to such individuals' personal accounts. From there, funds eventually found their way to the defendant.

Also convicted were the defendant's wife, employed by the general contractor as an accounting clerk, for her assistance in opening the bank accounts and supplying subcontractors with dummy invoices; the general contractor's procurement officer, responsible for evaluating bids and drafting subcontracts, who had been taking his cut; a "senior materials supervisor" for the same firm who was himself accepting kickbacks and laundering them through the defendant's accounts; one of the subcontractors' "project and labor superintendents," who served as the defendant's informant and bagman; and two of the subcontractors, indicted for filing corporate tax returns that showed payoffs as legitimately deductible expenses.

Like cases have already appeared; two officials extorting money were mentioned in the second chapter. A pair of California cases involving HUD inspectors give evidence of similar behavior. The two defendants, responsible for seeing that contractors recondition dilapidated homes in accordance with agency standards, demanded payoffs as large as five to ten thousand dollars to approve poorly done repairs or increase repair allowances. Occasionally, they received other goods, too. One was given a refrigerator and mountain cabin, but the other, known to the IRS as a heavy gambler and convicted here for both tax evasion and bribery, apparently concentrated on ready money, collecting some $60,000 in payoffs in only three years. Two USDA meat inspectors from the same state also solicited kickbacks, in their case to allow the slaughtering process at individual plants to continue. They were paid with choice cuts of meat, sometimes as much as fifty pounds per week, as well as cash.

Extortion need not involve the taking of money. Any form of property may become the target of illicit demands. In an antitrust case, for example, two Georgia wholesale distributors of periodicals and paperback books were convicted of conspiring to prevent a third such corporation from soliciting or doing business in areas of the state customarily serviced by the defendants. Two strategies were employed. First, large numbers of free magazines were delivered to many of the victim's accounts. In addition, the two firms persuaded the latter's largest customer (in ways unspecified in the presentence report) to switch to one of them. After seven or eight months of such treatment, the victim entered into written agreement not to compete with the offenders for ten years. Clearly, its property was taken by force. One might imagine similar cases where a single company throws its economic or political weight around. Whether defendants are in league or act independently, their conduct is extortive; they take by force what should not be theirs. Given a sufficiently broad conception of property, one might extend such cases to include other forms of unfair competition, instances of union busting, indeed any display of power designed to intimidate.[62]

TAKING AND FRAUD TOGETHER

Certain cases combine the elements of taking and fraud in a way that permits the observer to untangle both and identify distinct strands of criminal activity, each belonging in a separate white-collar category. Charges in one such affair grew out of the collapse of a large over-the-counter securities company. The conspiracy began in 1970, when the firm opened a "clearance account" with a bank in New York City's financial district. It was given a line of credit of one million dollars--basically, a loan--and was thus able to begin large-scale trading immediately, having pledged customers' securities

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[62] Here, I have moved from the abuse of otherwise legitimate authority accruing as a result of one's position within a political system, to speak of the more general abuse of power. Weber's work is again of interest if we wish to make this distinction. He defines Macht as "the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests" (Weber, 1922/1947:152; 1922/1978:53). The two concepts may provide a framework for understanding extortion generally, but I can do no more than speculate, given the paucity of such cases in the materials at hand.

as collateral (this, without their knowledge or permission, in violation of SEC rules).

The company used this account to buy and sell for four years. Its investment decisions were less than brilliant, however, and in a generally weak market, it started to lose a great deal of money. To meet these deficits, as well as conspirators' personal expenses, the company made outright sales of customer holdings (again, absent permission), and began to routinely accept clients' orders without following through; a quote would appear on the confirmation of purchase form sent the buyer, but nothing was ever actually purchased. (This practice is known in the trade as "bucketing.")

To cover such activity, an elaborate set of intentionally misleading records was maintained. False trial balances consistently showed a strong, well-capitalized enterprise. Loans to the company were understated, cash on hand and in banks misreported, and many debts simply omitted. Phony bank statements were created to coincide with figures in the company's books and shown to SEC investigators; a false annual report was also filed with the Commission. All this permitted the firm to remain in business an extra year; when the end finally came in April 1974, many records were destroyed to frustrate prosecution efforts. By the time the dust settled, the company had declared bankruptcy, the Security Investor Protection Corporation had paid $2.2 million in claims, leaving "several million" dollars in losses uncompensated, and the scheme's principal figure was facing sixteen years in prison.

A crime as complex as this may be analyzed in several ways. The sale and other misuse of customer securities is properly classified a taking, "bucketing" a fraudulent sale (of a security that didn't exist) and, as I indicated in the previous chapter, the presentation of doctored evidence and dishonest reports to the SEC a fraudulent submission. Destroying evidence is a fraudulent submission, too, for it represents the intentional nondisclosure of information relevant to an organization's decisionmaking process.

These are the constituent parts of the crime. When one takes a broader view, the whole thing looks like a fraudulent sale; members of the investing public were tricked into buying a piece of the action via a company they thought was sound. Why not a taking? If we learned our savings or checking account was being tampered with, or our loan representative stealing, we would probably be outraged but, ultimately, not terribly concerned; everyone knows bank deposits are insured, that losses, large or small, will be covered. In the securities industry and other contexts, this is not so. When failure to publicize extensive looting or other antics can be said to induce investment and thus make more likely eventual uncompensated loss, it is perhaps more accurate to classify such conduct as fraud. Any case where improprieties are hidden or paper transactions used to lend the appearance of financial strength and bring in investors' monies is fraudulent. In that sense, this case is on all fours with the many SEC prosecutions where the issuing company is made to look prosperous; the one involving the manufacturer of modular housing in chapter two is representative.

THOSE WHO STEAL

Is there any relationship between personal background and criminal conduct in cases of taking? Tellers guilty of relatively simple thefts have for the most part led stable working or middle class lives until arrest. Their acts are often described as unpremeditated; even when presentence reports are not explicit, little planning or forethought is evident. Financial pressure at home is frequently cited once defendants are convicted.

Persons who commit similar crimes in slightly higher circles hold jobs that sound rather imposing--corporate loan officer, executive vice-president--but their positions are usually lacking in glamour and poorly paid; those with the most eminent titles are typically employed by small banks in out of the way places. Many, without college degree, much less professional training, have worked their way up slowly to their present rank. Perhaps the saddest case of this kind was that of an upstate New York man, a lifelong resident of the small town in which he was employed, who spent thirty years fighting his way from a teller's job to a vice-presidency--and an annual salary of $13,000. One year after conviction for embezzlement, he was driving the local school bus. Like tellers, bank officers often refer to financial problems when asked to explain their behavior. In their case, however, it is more likely that such difficulties concern imprudent investments or other non-necessities. One finds little evidence to support Cressey's (1953) theory of the "unshareable problem" but, then, presentence reports are likely not the best materials to use when trying to fathom defendant psychology.

More sophisticated takings are committed by knowledgeable employees, those who have moved up to a position of relative responsibility or who enjoy previous banking experience. Again, the backgrounds of such persons are, in general, unremarkable, though more than a few defendants in this category were products of broken homes or seemed to have difficulty adjusting to adult life.

It is more difficult to generalize about defendants in other taking cases. The most striking connection between crime and personal history is found among the few who keep taxes withheld from employees' paychecks. I read the reports of four such individuals; three had been previously convicted--for passing bad checks.

SUMMARY

Takings and the three varieties of fraud are to be distinguished according to offender presentation and victim response. Fraudulent presentations cause victims to change their minds; they make a conscious decision on the basis of some misstatement of fact. Those victimized by takings generally remain unaware that they part with money or other valuables. An exception occurs when money is extorted; here, victims are forced to give up their belongings.

Taking in white-collar crime categories is basically employee theft. In the banking and securities industries, money is stolen directly, or after manipulation of accounts, documents, or other materials. Keepings, though frequently prosecuted as embezzlement, are also found in many different contexts, as money entering or leaving an organization's control, or funds being collected on behalf of the victim are improperly retained while _en route_. Finally, we have talked of extortion, where taking depends on abuse of authority or power.

We have also seen how fraud and taking may appear together in more complicated circumstances. The next chapter's discussion of collusion behind us, we shall again meet cases where different kinds of white-collar crime combine.

Chapter V

COLLUSION

Collusion, as I use the term, occurs whenever parties who are by definition adversaries or presumed to be at arms length, secretly cooperate. Collusion prevents the unbiased application of rules of decision and fetters rivalry, reserving for its beneficiaries opportunities otherwise the subject of open competition.

Collusion occurs in two settings. In the first, persons required to remain impartial pass partisan judgment because they are bribed. Such individuals may be government employees reviewing applications for permits and the like, other officials willing to give improper assistance to a friend's case, bank officers disbursing loans, or tellers processing withdrawal slips. Workers who accept bribes to direct their organization's business to selected recipients, at the expense of others equally deserving, are guilty of similar crimes. In the second, competitors themselves come together to allocate opportunities for profitmaking. These are the antitrust cases, of course, though analogous cases from other statutory categories will be found here, as well. Before proceeding to explore each of these, however, we should first acquaint ourselves with occasions of failed cooperation, for these provide much greater detail regarding preliminaries and the formation of collusive agreements than do cases where collusion actually comes off.

ATTEMPTED COLLUSION

Collusion can occur only by agreement of the principals. And since the principals are antagonists--persons who are not supposed to agree--negotiations must be a bit sticky, at least at first. The four cases presented here, three from the bribery sample, one a mail fraud, are thus worth reading, for they shed considerable light on that bargaining process. They are important, too, because they represent a sizeable portion of the white-collar crime prosecuted in the federal courts; 38.5% of the sentencing project's bribery offenders were convicted for making unaccepted bribe offers.

1. The defendant, an accountant responsible for the financial affairs of a travel agent (and reputed bookmaker), was present during the audit of his client's personal tax return. As the proceeding dragged on, he suggested that the IRS agent might want to take a trip to Las Vegas. The subject came up again when the pair met three months later to review the agent's findings.

A few days afterward, the defendant once more proposed that the agent take a trip--this time to either Vegas or Puerto Rico; the agent objected, on grounds a trip might be "too risky." The defendant asked the tax man to telephone in a week; by then he hoped to have the matter resolved. Some ten days later, the two met and the accountant tentatively agreed to pay the cash equivalent of a trip to Puerto Rico, indicating that his client had okayed this form of compensation. Six hundred dollars passed hands the next day, but the agent soon called the accountant's client to say that $600 was considerably less than he had been led to expect. After further negotiating and delay lasting two weeks, the IRS agent and accountant met again in a restaurant; an additional $700 was paid for a letter certifying that no change would be made in the travel agent's tax assessment. Both the accountant and the taxpayer were convicted, with the help of testimony from the tax man, who had only been playing along.

2. Another bribery case began when the defendant called an Immigration and Naturalization Service investigator regarding a pair of cases, those of acquaintances. The defendant called again two weeks later, to say that one of these friends would pay $1500 if his case were expedited. The INS agent spoke to the FBI, was told to go ahead, and arranged a meeting with the caller.

Wired to permit other government agents to eavesdrop on his conversation, the investigator met the defendant at a MacDonald's in a suburban shopping center. The latter now announced he could get $1000 from his friend in exchange for an Alien Registration Receipt Card (a green card). He also declared that his second friend could come up with $300 if that matter were "taken care of." At this point, the defendant handed the investigator a dated, signed note reading "I.O. You $1000."

The two met in the same restaurant three days later. They discussed several other cases in which the defendant wanted help, and the amounts the defendant could obtain in consideration for such assistance. The defendant then gave the INS agent $1000, receiving the green card in return. He was arrested almost immediately.

3. The owner of a butcher shop found business was slow. To supplement his retail income, he began to sell meat to local restaurants. But this required USDA approval. The first inspection of the defendant's store did not go well. The defendant's father, also present, offered the agency's representative, a circuit supervisor in the meat and poultry division, fifty dollars for his "help." This was refused.

The FBI was consulted, and it was decided to "wire" the USDA's man before future discussions. Another meeting was soon held to review conditions at the defendant's second store. The circuit supervisor outlined needed improvements; the defendant asked if there was anyone else he could talk to, if he could "spend a couple of dollars." Stating he could get $1000 "together," the store owner indicated in reply to a direct question that the money would be for the government official. At a subsequent meeting a few weeks later, the defendant asked if the official would "take some now and some later." The latter responded affirmatively and the owner left $300 on the counter. One week after this, the defendant gave $500 more. He was arrested that day.

4. The mail fraud case involved one West Coast defense contractor's attempt to rig bids for the manufacture and supply of pivots used in the gyrocompass on certain Air Force planes. As there were only two companies making this particular item, cooperation between the pair would have produced immediate rewards. An ex-employee of one of the firms called the principals of the other to say that his former employer's bid on the next gyro contract was significantly lower

than theirs. He then suggested that the bid would be withdrawn if payment in the amount of $50,000 were forthcoming. The officers of the company thus approached were honest, however, and notified the FBI at once. We thus have a record of what followed.

Three meetings were held in the next ten days. At the first, the fellow who made the initial call reiterated his ex-firm's offer. At the second, the price was raised, to $50,000 and 10% of all pivot orders over the next five years. (Total business was expected to be $2 million.) The cash payment was to be made in the form of a "loan" to the ex-employee and the president of his old company. Contracts for services to be rendered as manufacturer's representatives would be drawn up to make this "loan," and all future installments on the 10%, appear legitimate. The loan note, a $50,000 check, and the contracts were distributed at a final meeting; in return, the fellow who began it all with his telephone call provided a letter withdrawing the low bid. Arrests were made as the meeting broke up.

FAVORITISM

The first three attempt cases suggest what things are like when bribes are completed and government agents bought. This is useful information, for there are very few such cases to be found. Again, neither party to a one shot bribe will be prosecuted if both are dishonest; when parties to a continuing series of bribes remain silent, it may take a full-scale, proactive investigation to uncover collusion.

There are a handful of tax evasion cases in which government workers have taken bribes in exchange for official favor. In one, contractors dealing with a New York City municipal agency added to the income of an agency attorney. In another, a Chicago alderman was convicted for failing to report money received from property owners and construction companies seeking changes in zoning laws, funds which generally arrived in amounts of one to several thousand dollars. A mail fraud prosecution focused on the diverse activity of an attorney for a state department of registration and education. He was taking bribes to expedite applications for barber licenses. The same fellow was also suspected of accepting gifts from parties interested in the placement of traffic lights and shopping center driveways, but that inquiry was dropped when he admitted guilt in the licensing matter.

Mail fraud was again the charge in a more celebrated case of official favoritism--the Marvin Mandel affair. The then-governor of Maryland was convicted for accepting a stream of gifts in return for support of legislation aiding a small racetrack covertly owned by a group of friends.[63]

Mandel's four codefendants, two of whom were his former campaign manager and former chief fund raiser, secretly purchased Marlboro racetrack, in southern Maryland, on the last day of 1971, shortly after the governor had vetoed legislation awarding the course an extra eighteen days of racing each year. Once the purchase had been made, however, Mandel changed his tune, and persuaded the state legislature

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[63] The conviction came after one of the longest jury deliberations on record in a federal courtroom. It ended what was, in fact, Mandel's second trial, the first having been declared a mistrial amidst accusations of jury tampering. Mail fraud charges were predicated on the thesis that the citizens of Maryland had been defrauded of their right to a corruption-free state government.

to override the veto. Two years later, a statute benefitting the codefendants' interests in Bowie, Marlboro's successor, was enacted. Mandel was also able to influence the state racing commission's handling of matters concerning Marlboro and, later, Bowie. Information regarding actual ownership as well as the financial dealings of the defendants was, of course, withheld throughout. Other businesses owned by three of the governor's friends received contracts and additional benefits from the state during these years, too. In return, Mandel, who denied any knowledge of his codefendants' undisclosed holdings (the lack of disclosure was itself not illegal), was given clothing, jewelry, vacation trips, loans, insurance premium payments, financial interests in an investment company and another business, and cash for his $200,000 divorce settlement in 1974. According to the prosecution, he received more than $350,000 in six years.

Collusive Takings

In the cases above, government officials obliged by law to remain impartial in the exercise of their duties accepted payoffs in return for biased judgment and undue influence. Analogous cases of favoritism involve both government employees and workers in the private sector. These merit separate discussion because they are so reminiscent of the fraudulent submissions reviewed in chapter three. Bank employees knowingly approve phony loan applications or withdrawal forms; those in government agencies process deceptive benefit requests of various kinds--for a price. In effect, takings are made possible by the collusion of organizational insiders and external actors; the organization's funds are stolen when the inside defendant willingly hands them to outside conspirators. These cases are thus to be distinguished from frauds committed entirely by external individuals who convince a victim organization of something that is not true. Here, the organization's response to external display is determined by an employee, who knows in advance the presentation is a sham.

We have already seen cases of this general type. The credit fraud described in chapter two, in which a Seattle banker knowingly approved fraudulent home improvement loans, was an example. So was the case of the bank official in New York who teamed with the owners of several foreign shipping companies to make very large, undeserved loans. In both, bank employees were convicted of embezzlement, their colleagues of credit and lending institution fraud. This is typical.

A comparable prosecution in the Southern District went after a corporate loan officer and four outsiders who joined forces to rob their victim of more than a million dollars in just nine months. The officer approved unsecured loans in that amount to entirely worthless companies acquired or formed by one of his codefendants. The companies' loan applications were themselves accompanied by fraudulent financial statements; to cover himself even further, the bank's employee prepared misleading reports for his superior. Although the defendant deemed most culpable by the prosecution--the fellow who controlled the applicant corporations--continued to insist the loans were legitimate and intended solely for business purposes, a jury of his peers thought otherwise. This primary figure received a four year sentence; the loan officer, who had been rewarded for his participation with a mink coat, free vacations, and $14,000 in cash, got nine months.

Sometimes the focus in these cases clearly falls on one of the external conspirators. One such chap wanted to buy a West Coast life insurance company. To raise the necessary capital, he asked a group of friends, relatives, and business acquaintances to apply for loans on his behalf, directing each to a particular assistant vice-president at the Bank of America, who had been paid to okay such requests. The ringleader often completed the required paperwork for his borrowers, never asking for more than $25,000, the limit of the loan officer's authority. Loan purpose and individual assets were misstated, though this was probably unnecessary; the compromised bank employee later reported that he did not actually read the applications. The scheme's architect, previously active in real estate development and oil exploration, used the monies thus received to maintain a rather indulgent lifestyle.

Those who filed applications did so upon promises of important jobs with the life insurance company, or future business contacts or other financial assistance. All felt betrayed by the primary figure, portrayed by more than one as a high-powered con man. The loan officer agreed; seeking to improve his own position by generating business he, too, had been taken in, thinking all loans would eventually be repaid.

Not all such prosecutions arise in banking circles. A California realty company first attracted the FBI's attention when one of its customers complained that the firm had purchased a VA mortgage-insured home in her deceased father's name. The woman had originally told the company that her father was a veteran, then asked that the company's application for VA mortgage insurance be withdrawn when she learned this was not so. Subsequent investigation discovered the outfit was regularly falsifying employment and credit information on mortgage guarentee requests made in the names of purported veterans, having paid a VA employee to approve them. This fellow created at least one hundred certificates of eligibility for nonexistent or unqualified veterans in three years, receiving bribes totaling six to seven thousand dollars in $25 to $250 installments. All involved were convicted under 18 USC 1001, the false claims statute.

The center of attention in another false claims case, a staff member at Blue Cross/Blue Shield in New York City, would occasionally process legitimate medicare claims by sending out an extra payment to the policyholder. When the recipient called to question the overpayment, the defendant would offer to split the proceeds of that, and all subsequent augmented reimbursements, on a fifty-fifty basis. If an agreement was reached, the defendant would continue to routinely approve insurance claims for medical services never rendered. In five years, the claims worker and eight elderly men and women stole $124,000.

A "housing management technician" assisted two real estate agents in a scheme designed to take advantage of HUD's home auction procedure. Twice, the defendant told one of these fellows that no bids had been filed for a particular home and then, for $300, accepted the realtor's backdated offer on the property. These *post hoc* bids were in each case just slightly larger than the minimum permitted by HUD regulations; the buyer received his broker's commission, then resold the dwellings at a slight profit. Another time, the same agent filed a legitimate offer, and the HUD "technician" agreed to reduce it by $1000 if paid a bribe--the amended bid still being higher than any other. While it is not clear how HUD was victimized by the first scheme (unless it would have auctioned the homes for a greater price later on), the agency was certainly hurt in the second, for it collected $1000 less than it should have. The HUD employee and the other real estate man worked out a similar deal; on five occasions, winning bids were lowered until they were just larger than others that had been filed. Records of the original bids were always destroyed, the "housing management technician" receiving a total of $2200 for his work.

In each of the cases cited, the person making the decision to disburse funds on behalf of the victim organization was in on the scheme. It might therefore be helpful to contrast these with two cases where insiders made possible successful fraudulent submissions. The first is particularly interesting, for it also sheds light on the social organization of check cashing and forging operations. Six co-conspirators were there charged with trying to defraud two banks of more than $60,000. Tellers in both banks stole customers' signature cards, withdrawal slips, change of address forms, and blank passbooks. Equipped with these materials, their codefendants tried to make fraudulent withdrawals by mail from individual accounts (fraudulent withdrawals because the transactions were not handled by the tellers who were part of the scheme, but by others; the defendants hoped to fool the banks).[64] The scheme's ringleader was said to be a principal

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[64] In fact, only one of the attempted withdrawals went through; suspicious bank personnel refused to honor four requests. The check

in a statewide ring which passed one million dollars in bad checks annually. A career criminal specializing in banking-related activities, this defendant allegedly had several women working for him as check negotiators. His past record included convictions for bank robbery, a Mann Act offense, pimping, and pandering.

In the second, five codefendants were indicted, pursuant to mail fraud and false statements statutes, for their respective roles in a plot to obtain unemployment benefits under false pretenses. The two primary actors fed tax and wage information for companies no longer in existence, containing the names of imaginary employees who had been given legitimate social security numbers, into the Georgia State Department of Labor's computers. False data in place, a third defendant recruited two women to file for unemployment benefits using the fictitious names. Checks thus received were deposited in a special business account opened for precisely that purpose. (The money was quickly withdrawn.) Despite the relative sophistication of the scheme, the team managed to collect only $2700. Here, too, the decision to approve unemployment claims was out of the players' hands.

Finally, just as takings may be facilitated by the collaboration of outside parties, so may organizations falling prey to keepings be victimized cooperatively. The stars of a "failure to remit" case, the officers of a corporation serving as a collection agency for overdue student loans, may have done an excellent job collecting, but for six years didn't bother to deliver all of the money they gathered. The

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that was released was subsequently not accepted for payment by the bank, but not before it had been used to purchase a Rolls Royce.

regional deputy director of HEW's Guaranteed Student Loan program was bribed (with undisclosed amounts of cash and at least one trip to Las Vegas) to overlook such irregularity; the scheme would likely not have continued for such a long time had he been honest.

Collusive Contracting

In a third species of favoritism, workers are not asked to bend rules of decision or lend a partisan cause support; they enter into collusive agreements with outsiders regarding the purchase of goods or services for their employers. Again, such behavior is not specific to government work; any organization, public or private, may be so victimized. Cases here bear a strong family resemblence to collusive takings. Yet there are a number of differences. Most important, one does not have the sense while reading collusive takings that limited organizational resources are the subject of competition. The most conspicuous victims of collusive contracting are competitors of the favored party. The barrels of money kept in bank vaults and federal offices are never bottomless, but deserving persons are not denied assistance because a phony loan application or request for government benefits is knowingly approved. In contracting cases, persons making decisions on behalf of employers, or those able to manipulate such decisions, are bribed and as a result direct their organization's business to selected recipients, individual or corporate. Competitors lose out, and the result of collaboration becomes something more than mere theft.

Other differences between these two forms of favoritism are worth noting. The collusive takings described above involved exceptional events, in the sense that bank loans and government grants are executed at the decisionmaker's pleasure. Nothing required that such awards be made. Contracting cases occur in the everyday course of business; they focus on the purchase of goods and services necessary for organizational survival. Second, the takings involved a unilateral distribution of cash. Organizations whose workers play favorites always receive something in return when entering into contracts. A third dissimilarity is related. Like the fraudulent submissions they brought to mind, collusive takings injured particular organizations--the ones whose employers intentionally approved dishonest requests--and no one else. Who are the victims of favoritism in contracting cases? Competitors, of course, so we can say at once that the circle of injured persons is wider. But whether the focal organization is hurt depends entirely on circumstance, in particular, on how the beneficiaries of favoritism decide to allocate the costs of doing business with the other party's employee.

I begin with two cases not at all unusual. A construction company's engineer arranged for a third party to sell two dredges at inflated prices to his employer. The two defendants split the difference between the sale price and actual value of the machinery. Though the presentence report was not explicit, it seemed the engineer handled all the details for his firm, including the decision to purchase.

In another case, a manufacturing company's traffic manager collected kickbacks of five dollars per load from trucking and other transportation companies in exchange for his approval of shipping contracts. Two fictitious business firms were created by this defendant and then used to send invoices to shippers, making illegal payments to the traffic manager seem like ordinary commercial transactions. In all, the defendant received $51,300 from six different companies between 1970 and 1973. Since the trucking firms were adding the cost of doing business with the defendant to the shipping contracts they signed, prosecutors reasoned that the defendant's company was being defrauded--tricked into paying too much--and the case was brought as a mail fraud. So was that against the construction engineer. Business contracts here replaced loan agreements, but neither defendant did anything a compromised loan officer would not recognize.

Nevertheless, essential differences appear. The manufacturer was arranging for the transport of its products, something it would have to do in any event; the construction company was purchasing needed equipment. The agreements to collude at the heart of these cases arose in the context of normal business affairs. And both employers got something for their money, even if they overpaid; the target organizations were injured only to the extent payoffs were allocated to them. After all, such costs may be absorbed by the bribe giver, or passed on to other consumers. But if these firms seem less the victims here, other victims take their place--competitors of those favored by the construction engineer and traffic manager, unfairly deprived of business, once orders to purchase and shipping contracts were no longer awarded on merit.

Injury to competitors, rather than employers, seems even more likely in a case from Maryland. The superintendant of vehicle operations for the Postal Service there, responsible for the rental of private vehicles needed to deliver the mail, accepted bribes from the president of a leasing company for four years. In return for directing most Postal Service business to this firm, and occasionally providing it with bidding information, the superintendant received free use of an automobile (including gas and maintenance), a watch, liquor, and entertainment. The presentence report did not indicate whether leasing costs were adjusted to reflect the value of such gifts.

Cases victimizing competitors also include the disc jockey payola case and the nursing home prosecutions mentioned in chapter two. Of course, as before, victims become more numerous to the extent kickback expenses are passed on to consumers of the briber's products (record buyers, medicaid patients/government health insurance programs). How were such costs allocated when "merchandising specialists" with the Army and Air Force Exchange Service[65] accepted $500 Christmas gifts from a firm they normally did business with? Though nothing in the presentence reports disputed the defendants' insistence that the gifts did not affect purchasing decisions, they were clearly intended to win favor; someone must have paid for them, even if it was not the AAFES.

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[65] The Exchange Service buys the goods that are sold in post exchanges on military bases. It is also responsible for px construction.

Competitors are injured any time one of their number buys bidding information on the inside. In a related prosecution, a group of general contractors were bribing AAFES officials to receive intelligence regarding cost estimates and bidding on Exchange Service construction contracts. With such information, the contractors submitted low bids whenever they wanted, or had previously submitted proposals revised after the fact. Here, only competitors were hurt; the Exchange Service actually got its work done for less.

Injury to competitors, of course, presupposes the existence of competition. The owner of an air conditioning company asked a Maryland postal service employee, an administrative assistant in the Office of Plant Maintenance, to provide the names of other contractors willing to submit complimentary--intentionally high--bids. Two of these would allow the defendants to get around Postal Service regulations requiring at least three bids before contracts could be let. A couple of compliant individuals were found, and the air conditioner won three contracts in half a year. Because the two defendants thought it might look suspicious if the same company won every bidding contest, the administrative assistant set up a dummy corporation and arranged for it to be awarded a fourth contract, also on the basis of fixed bids. The actual work was performed by the air conditioner's firm. The postal worker was given a humidifier, hot water heater, $700 in "consulting fees," and numerous free lunches for his assistance. The presentence report did not state whether the compliant bidders he found, who remained unindicted, received anything for their role in the scheme. Whether they did or not, victimization is unclear. Did the Postal

Service overpay? Would its air conditioning work have been completed at all in the absence of collusion?

COALITION

Collusion in restraint of competition takes different forms. In cases of favoritism, an organizational decisionmaker and outside parties secretly agree to change the rules of the game. The consideration for such agreements is monetary. I use the term coalition to refer to other kinds of collusive behavior: one in which presumably independent actors come together and agree to refrain from competition, thus injuring a wide public of consumers, another where such understanding is made at the expense of a single consumer--an organization requesting offers for its business. Consideration in the former is mutual forbearance, in the latter it may be either mutual restraint or a monetary payment. I begin with the first category, cases where a group feigns competition before a large audience.

Fixing Things

Unlike cases of favoritism where one of the offenders plays a role within the target organization and direct communication links defendants and that enterprise, fixing cases are characterized by the detachment of illicit conduct and those harmed thereby; there is no interaction between perpetrators and victims. The fixing of prices by colluding business firms is a good example. A typical case was presented in the second chapter; here are three more:

- A case from southern Texas involved a conspiracy to fix prices and allocate business in the "rebar" steel industry. (Rebar steel is used to reinforce concrete structures and surfaces.) Nine manufacturers and their sales representatives were indicted; the defendants included three of the largest steel companies in the nation, as well as several smaller Texas firms.

The agreement between the defendants was established in 1969. Before then, local steel firms had been able to buy materials from foreign producers and thus compete effectively with domestic giants. However, with the imposition of tariffs on foreign steel in 1969, imports of rebar materials slackened, and the independents had to turn to American mills for their supply. This import reduction left the indicted corporations in virtually complete control of the south Texas market.[66]

Thus, the defendants were in position to unilaterally increase the price of rebar steel and to require independents to confine their competition to small contracts demanding less than two hundred tons (this figure was later raised to three hundred); the conspirators would themselves handle all larger jobs. Thereafter, regular monthly meetings were held to allocate these big contracts between the defendants. Representatives of the smaller companies also met regularly, and occasionally sent a liaison person to the defendants' own sessions. (An antitrust indictment was returned against these corporations, but that case

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[66] With total annual sales of approximately $20 million in the area, the defendants controlled about 7/8 of the regional market.

was not in the project's sample.)

At first, contracts were divided on the basis of asserted need; this procedure was soon dropped for one in which each defendant was awarded a certain percentage of market sales. In bidding situations, at least two other companies were required to file non-competitive bids; telephone checks were made to prevent slip-ups. In addition to allocating jobs between themselves, the defendants also set a fixed unit price for specified quantities of rebar material.

The conspiracy ended when it was exposed by a disgruntled former employee of one of the smaller firms.

- Five corporations and three individuals were charged in Hawaii with conspiring over a period of some twelve years to raise and fix the price of the packaged tours that attract visitors from the mainland to the Aloha State. Holding annual pricing meetings during, or immediately after, regular get-togethers of the industry's trade association,[67] the conspirators' basic procedure was relatively straightforward. The trade association's secretary mailed questionnaires to all those in the state selling goods and services that might be included in the tours, asking respondents to indicate the price of such items for the coming year. Once the gross cost of each package was calculated, an agreed percentage markup was added on.

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[67] The association was one of the organizations convicted; the others were tour wholesalers and operators.

Not content, the defendants annually reached separate accords governing the fees for revising packages after purchase, cancellation charges, fees for booking only a portion of a given tour, commissions to be paid retail travel agents, and the prices of so-called "specialty tours," offered at reduced rates to acquaint industry members with available trips. They also were able to eliminate a number of discounts the airlines offered on certain tour package components.

Meetings were held in one of several conference rooms in Honolulu office buildings; typically present in addition to those indicted were two or three other important area travel agents. At least one grand jury witness testified that tour operators had been meeting since the fifties; everyone agreed that price fixing conferences occurred regularly from the time the defendants formed their trade association in 1963. Some competition on markups was restored in 1971 with the market entrance of new firms who consistently undersold the defendants, but the conspiracy was apparently still operating effectively when this investigation began three years later.

• The earliest evidence of a conspiracy to raise the price of beer in Hawaii, carried out by the representatives of a major beer manufacturer, its area wholesaler, and the wholesalers for three other important brews, dated to May 1973. Documents found in two of the defendants' files revealed that this group of major beer distributors had then considered a joint price increase to be made effective in July of that year. Such increase was, in fact, announced (posted with county liquor commissions, as required by law), but it was nullified by the sixty day price freeze proclaimed in June. On August 15, 1973, immediately after the freeze was lifted, the defendants all posted a minor price increase.

In early October, two of the conspirators asked a third if the latter would be willing to follow their projected price increase. The third firm contacted its manufacturer to ask if it was prepared to authorize a wholesale price hike. The manufacturer was not, this information was relayed to the others, and no increase occurred.

The manufacturer felt differently in November. Its wholesaler was told an increase was possible, and was then asked to find out if the islands' other beer wholesalers would go along. A raise of 25-30 cents per case was envisaged. Inquiries were made, and one of the other wholesalers asked that a meeting of all four be held. This took place in early December; three of the four firms were represented, the general manager of the fourth having said he was willing to go along with any price increase the group agreed on. A tentative pact was reached; certain discounts to retailers were also removed. The absent general manager was called afterward. Once again, he agreed to follow the other defendants' lead.

A letter written by one of those present to his manufacturer is revealing. After notifying his supplier of the price agreement, he concluded, "Tear up this letter when you get through with it."

A series of telephone conversations followed the meeting; prices were increased three months later.

Major price increases in January and February 1975 were again prefaced by meetings and the agreement of all concerned. In November 1974, one of the wholesalers learned that its manufacturer was going to raise prices in January. Its president immediately contacted the other three to arrange a meeting to discuss the increase, as well as the possibility of charging deposits on beer kegs. A meeting was held at a coffee shop next to one of the conspirator's offices. This time, all four defendants were represented. The fellow who had initiated the meeting announced he would be raising his prices in January and asked the others what they would do. The three responded by saying they would lift prices by the same amount. According to a report written by one of those present, the defendants talked quite openly of raising prices on the brands they distributed from $1.74 per sixpack to $1.81, effective January 1, and then to $1.89 on May 1, 1975. One of the conspirators indicated it would probably not join the first increase, but would go to $1.89 in May. At a subsequent talk with its wholesaler, the defendant manufacturer decided it would hold off for a month on the first increase to avoid suspicion.

A different kind of fixing took place at the racetrack in Bowie, Maryland. Four jockeys and three other individuals were there charged with bribery in a sporting contest (18 USC 224), racketeering (18 USC 1952), tax and wire fraud, and conspiracy (18 USC 371) for arranging the results of a horse race. Their efforts look very much like the typical price fixing affair--a relatively small group of actors came together and agreed to refrain from competition. In one instance, bettors made wagers on horses that were "pulled" and hence had no chance to win; in the other, buyers are asked to purchase something at an inflated price. In neither do we find the personal reflection or consideration of a dishonest presentation that is the hallmark of fraud--bettors and buyers are victimized more by the fact of collusion than the possibility of deceit.

And Rigging Them

Price fixing and the allocation of customers and territories are accomplished at the expense of a potentially large number of scattered victims--the consumers of colluding firms' products or services. While victims remain unaware they are paying more than a free market would bear, the smell of fraud is not as strong in these cases as when bids are rigged by agreement. There we find a single victim--the organization reviewing proposals--taken in by what seem to be a series of fair and proper bids. The collusive bidding cases in that sense resemble fraudulent submissions; documents containing false information are forwarded to a single victim organization for bureaucratic processing.[68] But nothing in the bidding documents themselves is false (except perhaps the affirmation that bids have been calculated and submitted independently); the violated norm is one stating that bids

[68] And as I indicated in the second chapter, two such cases were labeled mail fraud by federal prosecutors.

are to be fairly arrived at, not that decisionmakers are to be told the truth.

Bids may be rigged in a single instance or on a continuing basis. The latter parallels the allocation of territory or individual accounts; instead of saying "A takes everyone west of the River, B takes the East Side, and C will handle all municipal business," the parties declare "A will take the first two, then it will be B's turn, and C will win the big Christmas contract." What is done with space in one case is accomplished over time in the other.

The reports suggest that bidding is not infrequently fixed. Such behavior is often associated with other anticompetitive practices. The linen company case from southern Florida, presented in chapter two, and the rebar steel case included rigged bidding. So did a series of cases from Louisiana and east Texas arising in the baked goods industry, separate prosecutions focusing on suppliers of building maintenance services in New York City and New Jersey, a milk case in eastern Arkansas, another rebar steel case (from western Missouri), and these:

- Seven construction firms and two individuals were convicted in a case involving the repair of a runway at O'Hare Airport. When bids for resurfacing were solicited, two pairs of companies, acting as joint ventures, decided to submit proposals. Each pair viewed the other as its most important competitor. Representatives of the four companies met, and one of the joint ventures agreed not to bid competitively, in exchange for a payoff of $165,000. The other group eventually won the contract with a bid of $3.5 million, though its initial cost estimate had been one million less. The difference was attributed by U.S. Attorneys to the bid rigging. The payoff was made not in cash, but free asphalt.

- Four firms were indicted in New Jersey after agreeing to fix the price of the electrical work they performed for a construction company by allocating assignments between themselves and submitting complimentary bids. Typically, the construction company would solicit bids for specialized phases of some larger project, using these bids to compute its own costs. The defendants and their representatives met with respect to each prospective job--about 25 or 30 times a year. Who would submit the lowest bid was decided at these meetings, held at diners and restaurants; work was shared on a rotating basis.

The president of one of these companies described the conspiracy as "an act of self-defense," designed to prevent the general contractor from setting one participant against another. The defendants' agreement was brought to the Justice Department's attention by the president of one of the defendant corporations, who thought he had been double-crossed by his colleagues. According to the presentence report, it is likely the rigged bidding would otherwise have remained undetected.

COMBINATION CASES

Collusion frequently appears in conjunction with other white-collar crimes. In SEC prosecutions, for example, brokers are often bribed to tout an issue to unwary investors.[69] A securities scheme in California brought fraud and collusion together in a different context. That case involved the bribery of a federal official and the fraudulent sale of "loan packages," deemed securities, to credit unions.

A trade school institute, the owner of five separate vocational schools, offered a senior program officer in HEW's Office of Education $1000 per month if he would help the organization complete its application for authorization to grant student loans, and see that such applications were reviewed by the HEW panel in his charge. This proposal was made at a meeting of institute officials and the government officer; at a second meeting two months later, the public servant responded by upping his price to 60% of the profits earned by one of the organization's subsidiaries, less the $12,000 annual payment already promised. The counteroffer was accepted.

The institute's loan authorization application was patently improper, as only one of its schools was in fact accredited--accreditation was an HEW requirement. However, the organization's papers were reviewed by the defendant official's panel, and loans in excess of $5.8 million were approved. Approximately $1 million of this amount was subsequently marketed under false pretenses

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[69] It is perhaps noteworthy that here, as in the tax evasion cases, collusion is prosecuted as a failure to report--failure to mention such compensation in the offering statement.

to victim credit unions. HEW authorization obtained, the schools would enter into installment contracts with prospective students, receiving promissory notes in exchange for educational services. These notes were then sold at a discount to the credit unions, who were expected to actually collect student payments. The credit unions were told that all defaulted loans would be repurchased; the defendants making such promises knew the pledge could never be carried out.

In another affair combining fraud and collusion, two realtors, wishing to control homes auctioned by HUD for speculative purposes, prepared fraudulent "offers to purchase" in fictitious names for nine HUD properties. A third codefendant, a local bank official, provided the mortgage funds these purchases required, approving loan applications "made" by the nine imaginary owners-to-be. In return, the officer received a portion of the loan proceeds, and a home, purchased by his two friends with funds from a separate bank loan issued by this defendant. When the banker approved loan papers he knew were false, a collusive taking occurred. And HUD, presented with phony "offers to purchase," fell victim to a fraudulent submission.

From Seattle comes a more complicated case. A middle-level HUD employee there conspired with outsiders to rip off the government, simultaneously cheating his partners in crime. In the first part of the scheme, the defendant, a "realty specialist," awarded purchase orders for painting HUD-owned apartments to his codefendant, a contractor, receiving kickbacks in return. Here competitors, and perhaps employer, were injured as a result of collusion between an organizational insider and external actors. Although the contractor was told the kickbacks would be used to pay someone else to do the painting, the defendant kept the money himself--a fraudulent sale (of a painting job) conducted on an intimate scale. The painting was actually paid for with fresh purchase orders issued to the third party selected to perform the work; the realty specialist approved every one for payment, though in some instances painting was never completed--a taking along the lines of the fictitious loans of wayward bank vice-presidents.

Activity in the scheme's second phase wasn't very different. Again we find the same pattern of collusion, fraudulent sale, and taking. The HUD worker issued purchase orders for the installation of locks and peepholes, telling the contractor and his wife to furnish all necessary materials. He also told them he could do them a favor by obtaining the locks and peepholes quite cheaply, asking that they reimburse him for such items. In fact, our friend presented his two gulls with phony register receipts--he was getting everything free, using always available HUD purchase order forms. This little charade performed, the defendant would certify that installation had been completed and inspected, and have the purchase orders paid, whether jobs had actually been done or not.

COLLUDERS

How very middle class the defendants in collusion cases are! Stability, at work and at home, seems the hallmark of their lives. Those who try unsuccessfully to bribe government officials are often the owners of small businesses.[78] A surprising number, especially among defendants from the East Coast, are first generation immigrants, products of ethnic eastern and southern European backgrounds. The Mandel case notwithstanding, officials who do accept bribes are not, in general, of high rank; they are the functionaries who deal directly with the publics their agencies serve. If any colluders depart from the middle class norm, they are the outsiders in collusive takings. These persons quite often have serious prior records, or have been suspected of similar conduct in the past. Their colleagues are their satellites, basically clean folks under the influence of a career white-collar criminal. The participants in collusive contracting cases also have occasional arrest records or histories of familial upset and personal maladjustment.

Antitrust defendants more than compensate, though. As I indicated in the second chapter, persons indicted in such cases are clearly the most "white-collar" of all whose crimes have been here reviewed. Whether wealthy principal of a small, closely held corporation, comfortable middle class management figure in a larger firm, or as is the case on occasion, major national executive, antitrust defendants have lived almost irreproachable lives until their arrest. Income, family, mental and physical health aside, the many letters of support filed by civic leaders testify to their reputations in the community. Particularly interesting, however, is how little effect criminal

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[78] Though many of these cases involved the audit of company books, only one in the sentencing project's sample witnessed a corporate indictment.

conviction seems to have on all this. Few antitrust defendants lose jobs, families, or even standing (to the extent the presentence reports say anything about the latter) as a result of their encounter with the law.

SUMMARY

When adversaries or parties to relationships that should be arms length secretly agree to cooperate, they collude. I first reviewed instances where actors failed to establish collusive agreements, then considered two settings in which collusion does take place. Cases of favoritism include bribery, tax evasion, and mail fraud prosecutions where federal employees accept payoffs designed to influence substantive decisions made in an official capacity. Takings made possible by collusion, whether banking cases labeled embezzlement and credit fraud, or false claims arising in a government context, and cases from other legal categories, where an organization's employee, government worker or not, directs that organization's business to firms or individuals that pay for such privilege, are similar, in the sense that money has purchased partiality.

In crimes of coalition, rivals agree to refrain from competition. In general, no money passes hands; the consideration for such agreements is mutual restraint and resulting profit. Price fixing and the allocation of territories or accounts victimize a broad public; bid rigging, a single concern. While this distinction is useful, it does not cloud the fact that many antitrust cases witness both kinds of behavior.

Chapter VI

ENDGAME

This essay began by arguing that an unrewarding analytic framework, coupled with a disregard for the details of actual conduct, severely limited our understanding of what is called white-collar crime. The labels traditionally applied to such phenomena, it was said, are really inappropriate, for they structure our perception of white-collar crime in an artificial, ultimately misleading, way. Only by forgetting official taxonomy and developing a new typology--one that made sociological sense--could we hope to learn something about our subject.

We were thus asked to ignore statutory categories and focus instead on the behavioral elements crimes had in common, creating new divisions on the basis of real-world activity--the interaction of perpetrators and victims--and the social context in which such interaction occurred. By uniting like characteristics previously distinguished, by making other distinctions now ignored, a new method of describing white-collar crime might be found. Indeed, it was. The last three chapters have discovered that eight statutory "packages" yield but three major kinds of nonviolent economic crime: fraud, taking, and collusion. And if we are to understand white-collar crime, fraud, taking, and collusion are the categories we must use; reflecting behavioral content directly, they promise greater insight and more powerful prediction than those the legal system provides. Let us briefly review the conduct each depicts.

Fraud involves misrepresentation or nondisclosure meant to fool someone acting in reliance; its victims are tricked into action as a direct result of a false presentation or other misstatement of reality by the defendant. The third chapter identified the three different types of fraudulent activity found in the sentencing project's files. In the first, interaction was relatively formal, occurring between one or more external actors and a single victim organization. I called these fraudulent submissions, because in each instance outsiders submitted materials for official organizational review that were, in some material respect, false and misleading. These cases included credit and lending institution frauds involving phony bank loan applications, and false claims and statements cases in which a government agency fell victim to a fraudulent request for its benefits or services, or made some other decision on the basis of a deceptive presentation. Frauds stemming from HUD and VA mortgage insurance operations and related federal housing programs were frauds of submission. So were mail and wire frauds victimizing private organizations, such as insurance companies, or credit card issuing retailers. Tax cases, as well, were classified here.

The second group of frauds were structurally similar; again, external actors and a single victim organization were involved. In these fraudulent purchases, merchandise was bought, but never paid for. Cases victimizing mail order firms closely resembled fraudulent submissions; external actors made formal, but specious, requests of organizations. Critical to the distinction, however, was the fact that victims did not review fraudulent purchase orders in the same fashion as fraudulent submissions; they simply reacted, instead of making decisions on the basis of a review of proffered materials. Mail fraud was the most frequent source of such cases; it provided others, too, in which businesses preyed on one another and interaction between perpetrator and victim was more free-form. These might well have been prosecuted as bankruptcy frauds, for they included typical scams in which an organization was systematically looted until only a penniless shell remained.

Fraudulent sales formed the third subcategory. Here, almost all defendants operated behind the cover of organization; cases often gave fascinating evidence of well designed, relatively complex, impression management ploys. These presentational strategies frequently claimed numerous victims, individuals and organizations alike, who were induced to purchase goods or services--oil wells, desert land, franchises, gold coins, shares of worthless corporations--for more than such products were really worth. Frauds of sale included mail, wire, and securities fraud prosections.

Takings were, quite simply, thefts. Though occasionally accompanied by deceit or chicanery, taking was distinguished from fraud because its victims did not act in response to defendant misrepresentations. Something of value was taken from the victim, not given with the victim's at least temporary consent to the defendant; victims did not act in reliance on perpetrators' false displays.

Many takings were relatively straightforward affairs involving sleight of hand or simple manipulation of an organization's records. Others were significantly more complicated, demanding sophisticated technical understanding or patient maneuvers involving books and equipment. In most instances, however, takings were accomplished by defendants who worked alone. Such cases came from the bank embezzlement, securities fraud and, occasionally, the mail fraud categories.

Certain takings were perhaps playfully termed keepings, for theft in these cases was accomplished by merely keeping funds that had come into the defendant's possession legitimately; in addition to embezzlements and mail frauds, a number of tax cases were found here. Finally, several of the sentencing project's takings amounted to extortion; these forced takings were carried out, not with wit or cunning, but through the abuse of authority or naked economic power. Such cases were variously prosecuted as mail frauds, bribes, or violations of the antitrust laws.

Collusion--the secret cooperation of parties who are by definition adversaries or presumed to be at arms length--was found in the cases examined to occur in two different settings. In the first, individuals required to remain impartial accepted bribes designed to win influence. These were the cases of favoritism; defendants included government officials on the take, most frequently prosecuted in the bribery, mail fraud, or tax categories. Here, too, were the employees of organizations, public and private, who stole while in league with external conspirators. In banking circles, where phony loan applications were intentionally approved, collusive takings were labeled embezzlement and credit and lending fraud. Similar cases, in which government benefits were consciously given away, were also found in false claims and HUD/VA files. Workers who directed their employer's business to selected recipients in exchange for gifts and other favors rounded out the category. Such activity was found in bribery, tax, mail and credit fraud, embezzlement, and occasionally, false claims cases. In the second, competitors themselves joined forces to allocate economic opportunity. These were the antitrust cases (though there were a handful of mail frauds and at least one bribery case here, too). Coalitions in restraint of trade fixed prices, divided territories and accounts, and rigged bids, victimizing both the general public and specific consumers.

It would be misleading to suggest the typology is entirely without difficulty, however. Several limitations of the instant research were discussed in the second chapter. Only criminal activity resulting in conviction of at least one of the principals was studied. And only eight offenses--federal, at that--were considered. Undetected or unreported crime was not examined. Neither was wrongdoing prosecuted in state courts, or tried before civil or administrative tribunals. The typology describes only the nonviolent economic crime actually surveyed; its categories inevitably reflect the materials which have informed it.

This is a particularly important point. I mentioned at the outset that an inductive, classificatory typology of the kind developed here necessarily depends on the scope and quality of available data. How generalizable can my results be when they are based on relatively limited information? Only further work can answer this question. It is entirely possible that new forms of white-collar illegality will appear when attention turns to conduct processed outside the criminal justice system, or to behavior now found in other penal categories. Perhaps the definitions of fraud, taking, collusion, and omission will have to be revised. But activity as general and widespread as that described in these pages--fraudulent submissions, purchases, and sales, various forms of theft and collusion--must appear in other settings, too. The categories are themselves based on generically described behavior; they should be sufficiently supple to stand the test of fresh evidence.

Whatever the outcome in that regard, problems with the presentence reports did appear during the course of the enterprise. Certain cases were harder to classify than others and, as I have already indicated, a few included more than one kind of white-collar activity. Too, the presentence reports did not always contain as much information as one would have liked. Facts regarding persons who were not indicted were scanty, especially when such individuals were not among the defendant's closest colleagues. Details concerning behavior related to, but not an immediate part of, the criminal act were also insufficient. The possibility that fraudulent presentations often accompany takings was thus not fully explored, because data on conduct beyond the act of thievery itself remained generally unavailable. Coverup moves might have been more clearly described, as well, had circumstances surrounding the crime been more plentiful. And the line distinguishing hard bargaining between equals and extortion was occasionally difficult to establish, when offense descriptions were unclear or incomplete.

Yet the typology does show how tricky legal categories can be. This, after all, was a primary purpose--to demonstrate that statutory boundaries do not divide the world of criminal activity into like behavioral units. Table 4 classifies each of the cases studied--by statute, and according to the typology. The number of defendant reports actually read is noted on the right side of the slash or parenthetically. Looking at the eight offense categories, we see that mail fraud, not surprisingly, is widely spread, and that tax evasion, bank embezzlement, and credit and lending institution fraud (which includes HUD-related frauds) are also quite heterogeneous. To the extent one can use the ratio of defendant reports to actual cases as an indicator of the number of persons involved in a given case, we see, as well, that takings are almost always solitary affairs (whether prosecuted as embezzlement or not), and that fraudulent purchases and sales are more frequently the result of group activity than fraudulent submissions. Even allowing for the indictment of corporate defendants in antitrust cases, a practice which inflates the proportion of reports to cases, the same may be said for restraint of trade--more actors are implicated in those cases than when other forms of collusion are put on trial. The bulk of cases within each statutory grouping falls in the expected place; most antitrust prosecutions involve illegal coalition, most securities cases are fraudulent sales, most bribes are some kind of collusion, and so on. But the table also reveals similarities in conduct which cut across statutory boundaries, and which might not have been self-evident at the start. Whether typical of their legal classification or not, most cases share important behavioral features with others in seemingly unrelated categories--parallels in behavior identified by a typology based on the structure and content of human activity.

TABLE 4

Cases by Statutory and Typological Category

	emb	brib	cred	fcs	mail	tax	anti	sec	total
FRAUD									
submissions	1/4	-	26/27	34/48	14/19	19/19	-	-	94/117
purchases	-	-	-	-	4/10	-	-	-	4/10
sales	-	-	-	-	8/38	-	-	27/89	35/127
TAKING									
simple	15/15	-	5/5	1/1	-	-	-	2/2	23/23
n.s. simple	7/7	-	-	-	-	-	-	1/1	8/8
keeping	4/4	-	1/1	-	1/2	4/4	-	-	10/11
extortion	-	7/7	-	-	1/2	-	1/2	-	9/11
COLLUSION									
col. taking	7/23	3/6	2/3	2/6	-	-	-	-	14/38
col. contract	-	10/13	-	-	1/1	1/7	-	-	12/21
other fav.	-	14/16	-	-	2/7	1/1	-	-	17/24
coalition	-	1/7	-	-	1/3	-	43/245	-	45/255
OMISSION	-	-	-	-	-	10/10	-	-	10/10
COMBINATION	-	1/1	1/3	-	3/4	-	-	4/18	9/26
unclear	1/1	-	-	-	2/4	-	-	1/2	4/7
TOTAL	35	36	35	37	37	35	44	35	294
	(54)	(50)	(39)	(55)	(90)	(41)	(247)	(112)	(688)

I would hope those parallels in behavior will suggest parallels in detection, prosecution, and correction to men and women with a professional interest in such matters. Perhaps investigative and enforcement activities previously organized in terms of a legal code would advance more effectively if workers were allowed to focus on commonalities in apparently dissimilar offenses. Actors now isolated in the criminal justice system because efforts are organized according to statutory category might recognize problems of mutual interest; practitioners who at present see no reason to communicate might share ideas once they realized they faced the same kind of case.

Let's run through several of the typology's categories. For the first time, a problem shared by many different organizations has been identified as one of fraudulent submission. Do the victims of such schemes, public or private, have something to learn from each other? Specific knowledge regarding the detection of fraudulent applications may already exist; if not, affected organizations, given available resources and the not insignificant strengths of bureaucracy, might protect themselves more efficiently by working together, developing routine, transferable mechanisms of control. Federal agencies trying to combat fraud might consider using the techniques of insurance companies or other financial institutions, for example.

Fraudulent purchases brought mail order and bankruptcy fraud together. Mail order firms have always been sensitive to the possibility of fraud, but every organization must transact with buyers of its goods and services. Again, victims who now think their situation unique might benefit from a sharing of information. Of course, the pace and sheer volume of interorganizational contacts may require the informality that now characterizes such dealing, making a solution to the joint problem less likely.

The two agencies whose duties include the control of fraudulent sales--the U.S. Postal Inspectors and the SEC--might usefully compare notes. Perhaps traits common to all fraudulent sale activity can be identified; this would be useful for both investigators and the consuming public. Given the usual balance of power between selling organization and victim, however, it is more likely that additional restraints will have to be generated. SEC reporting requirements, designed to control fraudulent offerings in the securities markets, might be used as models for the regulation of other sales made in interstate commerce. Short of this, other "windows" into organizational operations could be developed for the benefit of administrative agencies and consumers.

Might banks victimized by takings study with profit the surveillance techniques of other corporations having to contend with defalcating employees--or vice versa? Simple takings seem no different from most cases of employee theft (Robin, 1967); whether money or other goods are involved, the offender must seize personal control, then move valuables outside the organization. Similar problems of detection are thus raised for banks, government offices, securities companies, and other private firms. This is also true in more complex affairs. The few not-so-simple takings in the sentencing project's sample highlight a fact that may already be painfully obvious to many--technology has made possible new forms of relatively sophisticated crime. Once more, regardless of how such activity is labeled by the criminal law, similar behaviors should be amenable to comparable techniques of control (Parker, 1980).

The section on keeping identifies a common problem for the first time, too. Funds are frequently transferred from one party to another in simple chains; any link in such networks may fail to play its role and not pass monies on. An information system protecting eventual recipients from theft by an intermediary might require actors at one end to notify those at the finish that a certain amount was on its way. Organizations whose salespersons are suspect could have customers advise them directly of forwarded payments, or tell consumers when refunds are forthcoming. The IRS, although the occasional victim of keeping, in effect does something like this already--returns filed by employees let the Service know exactly how much to expect in withheld taxes from employers.

Those who now investigate the corruption of public officials, and others responsible for the discovery and prosecution of anticompetitive practices in business, both confront the same kind of problem--how to ferret out the criminal behavior in question. As we have seen, unless one of the parties to collusion squeals, such activity is very difficult to detect. Perhaps one of these two groups of law enforcement officials has already developed a set of unobtrusive measures of collusive behavior; if not, their combined forces could begin that task. The work of Maltz and Pollack (1980), analyzing suspected cooperation among bidders, for example, shows that statistical techniques can be used to investigate and establish the existence of at least one pattern of collusion. While it is not clear that such methods will be applicable in other settings, they do represent a step in the right direction. Detecting variation from the expected is also involved when corrupt government officials must be found out; Rose-Ackerman (1978) has explored the settings in which political corruption may be anticipated. More important, she has also extended the argument to collusive practices in the private sector.

Cases of collusive taking and contracting both require that organizational boundaries be closely patrolled, that communication between insiders and outsiders be monitored. Experience with police corruption indicates that payoffs occur more frequently when actors can establish continuing relationships. One solution has thus been systematic rotation—by moving people around, connections that are "too" friendly can be severed. Authorities might alternatively note the frequency of interchange between employees and external actors. Does one party win "too" many HUD auctions? How many loans has a single officer made to the same group of recipients? Similarly, when much of an organization's business is funneled to a particular recipient, collusion must be suspected.

All this is not to suggest that legal categories be overthrown. Statutes are frequently adopted because the legislature wants to invoke an enforcement system already in place. Response mechanisms peculiarly attuned to conditions within an industry, or the problems raised by a particular kind of transaction, may be needed to root out illegal conduct effectively. It makes sense to talk of bank embezzlement as a crime apart from other takings if a group of specially trained bank examiners is available. The presence of the FBI or other federal agents may likewise warrant creation of new penal categories regardless of conduct. Similarities in underlying behavior are not the only way of classifying the world of criminal activity; though they bring to mind relationships that might otherwise have remained obscure, they may not be the most relevant criteria for legislative action.

The typology may therefore be most useful to other social scientists. While legal categorization serves the law's technical ends, it is likely to have relatively little to say regarding more general problems of causation and control. Here, the identification of sociologically homogeneous units of behavior will help those studying a variety of issues. Fraudulent sale, keeping, and coalition, not mail fraud or antitrust, will lead to a more complete understanding of criminal behavior and the judicial process. Perhaps those interested in correction will find that categories of offender follow from a meaningful typology of misdeeds. The materials presented in concluding each of the three substantive chapters suggest this may be the case; certainly, behavior should be related to defendant background and motivation. Those interested in sentencing disparity might also take heed. Do similarly situated defendants actually receive like sentences? If "similarly situated" requires that offenders have committed like crimes, a typology that really identifies like crimes is necessary.

These remarks are meant only to be illustrative. Ultimately, typologies are a means of examining and giving order to the chaos of experience; with classification, "We restore nature to the simple conditions out of which its endless variety was developed" (Jevons, 1877:674). Understanding is in part a matter of attaching labels--of pigeonholing. When we give something a name, we are deciding where it fits, associating that something, now labeled, with other phenomena that have been given similar tags in the past. If we change typologies, we alter more than just a name; we change associations, and with them, the direction and quality of thought concerning a particular subject. So may it be with this typology, as it provides practitioners and theorists with a new way of knowing white-collar crime.

THE CRIMINALOID REVISITED

The creation of a new classificatory scheme has been this essay's primary concern, but what of the introductory chapter's suggestion that a sociologically relevant analysis of detailed case materials might illuminate the nature and significance of white-collar crime? Noting the term had been used most often to refer to various forms of nonviolent economic illegality, I asked whether it was wise to either label all such conduct white-collar, or grace some subset of behaviors in that universe with a dramatic title.

As to the first question, we can draw no definitive conclusion. The materials examined did not include more traditional forms of criminal behavior; since no comparison of white-collar and other crime was made, we cannot know whether there is anything distinctive about the former. Yet looking within the restricted sample of illegal conduct that was studied, one may say that certain cases seem more special than others, that some involve many actors in far-flung settings, result in extensive gain, and illuminate the social organization of criminal activity. Which are these? Throughout, I have found it difficult to differentiate "big" and "little," or "important" and "unimportant," crimes according to the nature of the behavior involved or kind of victim claimed. But I think the distinction can be made successfully in terms of criminal actor. Very simply, "the bigger criminals are, the harder victims fall." Let me explain what I mean by referring to an analysis of the predictors of offense magnitude reported in other research from the sentencing project, an investigation of the more general relationship of organization and the nature, consequences, and processing of white-collar crimes (Wheeler and Rothman, 1982).

Working with data originally coded by the sentencing program, this study used ordinary least squares regression to identify the predictors of offense size: the amount, in dollars, of the "take" in each of the project's cases. This analysis proceeded in three stages. The first focused on offense characteristics arguably relevant to magnitude: these included offense frequency (the number of times a crime was committed), offense duration (time from first act to last), geographic spread of the offense and its consequences, the complexity of the offense (the number of levels criminal activity might be said to include), offense sophistication (subjectively rated by the sentencing project's coders), and the defendant's use of an occupational role to effect or facilitate criminal activity.[71]

Once variables were found that described the offense and were also relevant to magnitude, a second set of independent variables was examined--those describing offender traits. The defendant's age, sex, race, education, record of previous arrest, position within employing organization (measured whether or not such position was used to further

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[71] Geographic spread measured the effect of criminal activity over immediate locality, region, state, and nation. Complexity reflected social organization; it asked coders to specify the level at which each defendant operated in relation to others.

the crime), occupational status (quantified in terms of Duncan S.E.I. scores; Duncan, 1961), and what the sentencing program termed the defendant's "impeccability," or general standing in the community, were all used in regression equations during this stage;[72] a "best" model, measuring attributes of both offense and offender, was thus estimated. Finally, a dummy variable, reflecting whether the crime in question had been conducted through or with the assistance of a formal organization, was added to this already-developed equation--to see whether the fact of organization made any difference to offense magnitude, once other significantly related factors had been taken into account.

Very briefly, the results of this inquiry can be summarized as follows. Of the variables describing offense characteristics, duration, geographic spread, complexity, and sophistication were consistently significant at very low alpha levels ($p=.0001$); the frequency of illegal acts, and the defendant's use of an occupational role, were insignificant. Of the offender traits, age, race, education, and prior record were found unimportant, but sex did prove a significant predictor of offense magnitude. So did impeccability, occupational status, and position in firm--in that order. The significance of sex is perhaps misleading, given the sentencing project's sample; a large number of its women were relatively lowly placed bank tellers convicted of embezzlement.[73] The variable is

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[72] Impeccability was a composite of 29 background variables generally included in the presentence reports. These described early family life, academic performance, military and employment history, present living arrangements, religious attendance, group affiliations, involvement with drugs and alcohol, and community reputation.

therefore an offense-specific measure of status as much as an indicator of valid sex differences in criminal activity.

The relationship of the three variables more obviously related to status--impeccability, occupational status, and position in firm--is more interesting. One's company rank was always highly significant (p=.0001), no matter which of the other two were included in the model being tested. Status and impeccability were significant when each was the only offender attribute in the equation, insignificant when position in firm was also present. And occupational status was significant, impeccability insignificant, when just those two were included.

Though the three significant offender variables thus differed in relative strength, "best" models containing each were used in the last phase of the analysis, when the organization variable was introduced, so that the effect of organization on magnitude might be understood completely. Organization was significant at the p=.01 level when added to the very strongest equation, the one containing position with employer. It was significant at the p=.0001 level when combined with equations including occupational status and impeccability--indeed, was a more significant factor than either of these two offender-related measures.

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[73] 15.1% of the sample's defendants were women; nearly half these women (46.4%) were convicted of bank embezzlement, and only one of those held a position higher than teller or clerk. Ninety percent of all female defendants held non-management jobs of that general rank.

A similar analysis was carried out for the sentencing cases that were nonorganizational, that is, not conducted through or with the assistance of a formal organization. With one exception, the same variables were discovered significant predictors of offense magnitude; offense frequency, in addition to those previously identified, deserved inclusion in the final model. Too, the same relative standing of position with employer, occupational status, and impeccability was again found.

Does our study of white-collar crime shed any light on these results? That a number of offense-related attributes are significant predictors of magnitude is to be expected. One can understand why duration, geographic extent, complexity, and sophistication are all linked to size of the take. But what can we say regarding the effect of organization? And why do rank with employer, occupational status, impeccability, and sex prove important, while other offender characteristics--age, race, education, and arrest record--do not? It is true, of course, that formal organizations function on a much grander scale than mere individuals. This means, _inter alia_, that organizations come into contact with more potential victims, that their operations justify larger loan requests (and product orders, and almost everything else), that their economic clout wins the forced cooperation of rivals more easily. Unless one joins with others (and incorporates), it is impossible to open sales offices in many different cities, to ask for funding in the hundreds of thousands of dollars, to declare with a straight face that one has processed large numbers of medicaid claims. Indeed, the larger the organization, the more likely it is that claims regarding apparently considerable activity will seem justified.

Or is it that victims are somehow less wary when they deal with organizations? I said earlier that organizations are viewed as presumptively middle class by other actors; to the extent an organization successfully presents itself as substantial, to the degree it creates an aura of legitimacy surrounding its activity, the persons and other organizations it interacts with will accept it as a member whose statements may be relied on. The available materials do not permit one to go much further than this--where organizational wrongdoing is concerned, the matter seems to be one of both scope and trust.[74]

But we must also consider the significance of the status-related variables. Position with employer was an extremely important indicator of offense magnitude. Sex, which in this instance, strongly reflected occupational rank, was significant, too. Impeccability and the more direct measure of occupational status also played influential roles. Perhaps the significance of these variables will help us understand the significance of organization. As we moved through the typology's categories, reviewing case materials, we frequently noted that persons of higher status or position committed larger white-collar crimes. Why

[74] Conklin (1977:56-60) has discussed the role of trust in business crime. He mentions the importance of projecting an image of prosperity in winning trust, but sees this strategy as being of limited applicability, an alternative "available only to those who have already established considerable economic power" (1977:58). The results presented here suggest the contrary; false fronts are all too readily erected by many white-collar criminals.

might this be so? The scope of attendant organizational operations cannot be a factor, for we have seen that regression equations for nonorganizational offenses produce the same results. Some intermediate mechanism linking offender status and criminal result is required. I suggest, therefore, that well-placed persons, like organizations, are trusted more. More generally, I propose that magnitude of victimization depends directly on the strength of the trust relationship between offender and victim which, in turn, depends directly on the perceived status of the defendant.

This relationship explains the significance and comparative power of the status-related offender variables, rank in firm, occupational status, and impeccability, as well as the effect of organization on offense size. In each case, victims react more sharply as the perceived status of the criminal actor increases. We have just spoken of the importance of perceived status in the context of organizational impropriety; organizations are trusted more than individuals, and apparently substantial organizations are trusted more than ones that seem less successful. The Rio Ranchos of the world prosper because they are big <u>and</u> because their size and ostensible solidity win more lasting trust. The same basic considerations should govern when individuals are involved. Nothing is as crucial as how we are viewed by others; esteem, prestige, respect--and trust--all depend on it. The bigger we are, the harder they fall. Thus, it should not surprise that the only significant offender variables were those reflecting the defendant's position within some social system. And of these, the most visible, position within employing firm, was the one most closely related to offense magnitude.[75]

It is therefore especially ironic that discussion regarding social status has all but disappeared from the literature on white-collar crime. Perhaps it would make sense to reemphasize social status in our examination of nonviolent economic crime, not only for the study of the differential effects of status on processing and enforcement, but to more fully appreciate its effects on criminal opportunity--opportunity made possible by the creation of bonds of trust between victim and offender. This need not mean a return to Sutherland's original formulation, or the use of the phrase "white-collar crime" (or one that is sartorially up-to-date) to delimit a unique set of illegal behaviors in terms of status. Greater sensitivity to interaction between victim and offender, the changing nature of their relationship over time, and the dependence of that relationship on the actors' perceptions of one another, is required.

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[75] It has been suggested that the link between status and offense magnitude is to be explained in terms of the defendant's cost/benefit analysis of the risks of illegal activity. Those of high status, it is said, have much to lose if criminal involvement backfires, and hence will not engage in wrongdoing unless the take promises to be great. One may, of course, restate the proposition by referring to trust; trusted individuals will not risk violating the confidence placed in them unless the stakes are high. In either case, there exists no firm evidence that defendants actually engage in rational calculation of this kind. More important, offense magnitude is related to perceived status, and offenders may not expect manipulated perceptions of status to be at all lasting, whether or nor criminal adventure succeeds. They simply haven't as much to lose as it might seem; their apparently exalted status will evaporate as soon as their act is over.

In recognizing the significance of social status we come full circle to Ross's criminaloid, that fellow who "takes care to meet all the conventional tests," not failing "in that scrupulous correctness of private and domestic life which confers respectability" (1907:62).

> The modern high-power dealer of woe wears immaculate linen, carries a silk hat and a lighted cigar, sins with a calm countenance and a serene soul, leagues or months from the evil he causes. Upon his gentlemanly presence the eventual blood and tears do not obtrude (1907:10-11).

For Ross, it was most important that the criminaloid's lofty social perch insulated the wrongdoer from the "flood of wrath" normally reserved for those who broke the law; he thought that society would not recognize inherently evil deeds as deserving of punishment when committed by persons of status. Ross noted only in passing that position meant opportunity,

> that, in a highly articulated society, the gravest harms are inflicted, not by the worst men, but by those with virtues enough to boost them into some coign of vantage. The boss who sells out the town and delivers the poor over to filth, disease, and the powers that prey, owes his chance to his engaging good-fellowship and big-heartedness. Some of the most dazzling careers of fraud have behind them long and reassuring records of probity, which have served to bait the trap of villainy (1907:30).

Ross also saw that nonviolent economic crime has consequences beyond those at once apparent. The sentencing project's statistics measured only the dollar magnitude of the crimes in its sample; costs incurred by those beyond the circle of immediate victims remained uncounted--and probably uncountable. But in many cases, such costs must be significant. If interpersonal trust maintains the complex social order, as the first chapter argued, then its violation does harm to that regime. Urban dwellers have learned to avoid certain areas after sundown because others they are likely to meet cannot be trusted, and the quality of city life has deteriorated accordingly. Has an equivalent loss of confidence occurred in other spheres? I said much earlier that complaints regarding official corruption and commercial fraud were relatively timeless, but perhaps the erosion of trust in mercantile institutions and government has today become more critical. The muckrakers and Ross wrote as the effects of America's rapid economic transformation in the late nineteenth century were first noticed; similar thoughts have been raised now and again as those effects have become even more pronounced. Do half the nation's voters stay at home on election day because they think presidential campaigns are quadrennial fraudulent sales? Constant exposure to business fraud, embezzlement among the mighty, price fixing, and the like must cause real disenchantment, as well.

Consider the following--possibilities real or imagined. If requests for assistance must be disbelieved, banks and other lending institutions, as well as individuals with significant spare cash, may be loathe to place their funds in any but the most secure of investments; this would contribute to the increasing centralization of financial resources in a few very large organizations, denying really innovative businesspeople and new enterprises an important source of much needed capital. If the statements in an offering prospectus are to be discounted, companies deserving of public support may not have a chance to grow. Consumers who have had to choose among overpriced, shoddy goods for too long may feel it necessary to look to the products of other nations for a "best buy." Cries about welfare cheating, or food stamp and medicaid fraud, may lead to the more general rollback of government support services. And the average person, reading of the effects of industrial concentration and noncompetition on productivity, hearing reports of fraud, theft, and corruption, may not be blamed if he or she decides that everyone is in it for themselves, that values once regarded as basic are outmoded, that the altruistic impulse simply doesn't pay.

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