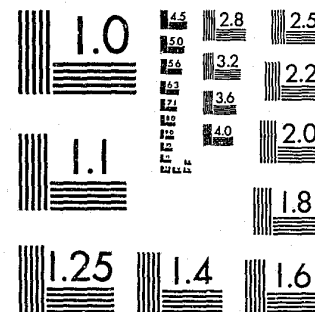


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EDWIN L. MILLER, JR.
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District Attorney

The San Diego County Law Enforcement Quarterly contains information of interest to law enforcement agencies. Included in the Quarterly are:

1. Feature Articles in Specific Areas of Law.
2. Summaries of Recent Cases with a Suggested Application for Use in the Field.
3. Point of Law, a Direct Answer to Your Question.
4. An Index for Easy Reference.

The purpose of this report is to provide the patrol officer with assistance to understanding rapidly changing aspects of the criminal law. Comments directed at improving this bulletin or making it more relevant to your use are welcome as it is our intent to make this report as useful as possible. Please address your questions or suggestions to:

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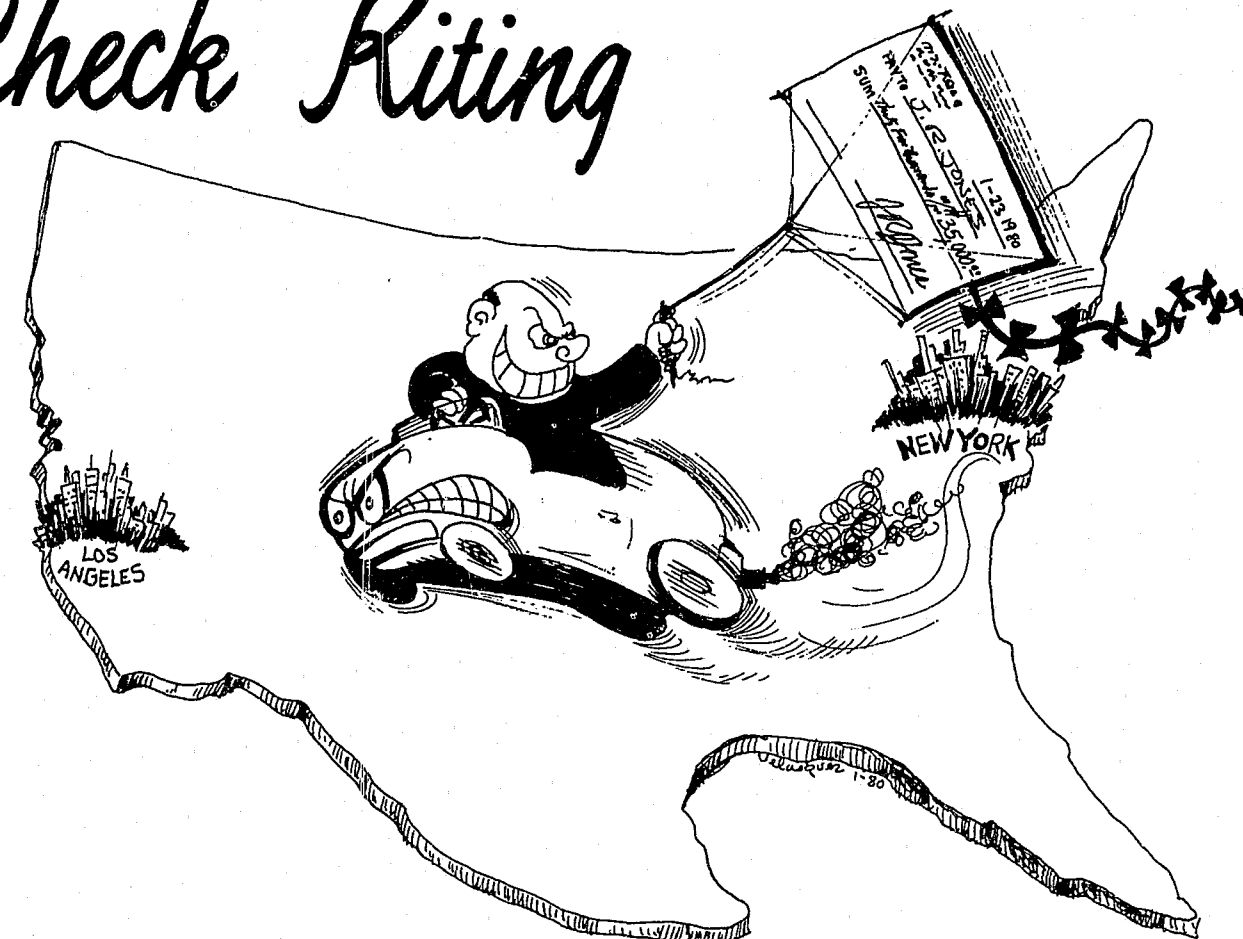
PETER C. LEHMAN
Deputy District Attorney
Editor

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66688 Check Kiting



A Convicted Kiter Tells How It Works and Why It Works

by Allan Sonnenschein

Check kiting schemes are object lessons in one guiding principle of white collar crime — "The pen is mightier than the sword." If the aphorism leads him to the crime, it is the white collar criminal's allies who take him to the heights of success he enjoys.

The white collar criminal has many allies — a public ignorant of his crime, a victim who protects the victimizer, a law enforcement community which does little to prevent and punish the crime.

Bank crimes are most commonly associated with the names movie directors have romanticized and folklorists have added to America's mythology. In reality, Bonnie, Clyde and Dillinger, to cite but a few, left legacies of violence, decades of imprisonment, a trail of deaths by guns of pursuing lawmen and, most relevant in this context, total failure in what their holdups of banks added to their net worth.

In contrast, there has been relatively little interest in the staggering amounts of money taken from banks by white collar criminals. A 1977 *Wall Street Journal* article explored white collar bank crime in general and focused on one modern New York City bank which allegedly lost \$12 million to check kitters

in 1976 alone. A bank spokesman was reluctant to talk about losses.

Despite the millions stolen, that bank follows the industry's traditional dogma of resignation and acceptance when hit by kiting crimes. The underlying assumption seems to be that public disclosure will serve as a catalyst for yet more bank crimes.

It is not only the banking industry's stoic response to theft which is to be considered. Another practice by bank policymakers is far more serious. In police investigations and in criminal prosecution procedures, banks will not, generally, cooperate on a voluntary basis. All things considered, this is a healthy environment for check kitters to work in.

And how do they work? Very well, as we shall see.

Check kiting is more than cashing a worthless check and getting away with it. Metaphorically, it is the domino theory in reverse. Here, worthless checks, deposited one after the other, act to support worthless paper deposits made earlier. The aim is to build up a continually growing reserve of credits from deposits of checks which have a potential longevity of 10 days before bouncing. The idea is to keep the account "alive" with newly deposited worthless checks to offset those which have bounced. The kite continues until bank officials cannot miss the obvious signs of fraud. Keep in mind that today's

deposits are tomorrow's credits.

Federal Reserve Bank commercial bank members are permitted to credit accounts with "uncollected funds." Basically, this means that a bank customer is able to convert a deposited check into cash, although his bank has not received credit from the bank issuing the deposited check.

A little deductive reasoning about geography provides the kiter with a second necessary condition for his crime. The distance between depositing bank and the issuing bank is an important factor in determining the period of time available before the bum check bounces. Knowing this period of time is crucial to the kiter. Check kitters have added variables to improve upon while not upsetting the basic time equation.

Banks have taken some security measures which, while relatively effective in stopping the more simple bad check passing, are no obstacles to check kiting crimes. The Bank of America provides an example.

America's largest bank has the policy of not allowing new customers to receive credits on uncollected funds, especially if the deposited checks are from out of town. Unfortunately, for the bank and not the kiter, the definition of a new customer is not all it could be.

Therefore, the metamorphosis of "new customer" into "regular customer" is what the kiter accepts as the waiting period before he will be able to begin operating in earnest. And what is that period of time? Bank of America, as other banks, treats its patrons as regular customers when preprinted personalized checks and deposit slips are issued. And that doesn't take long.

In the interval between the opening of the account and the issuance of temporary checks and the 10 working days later when the new customer receives his permanent checks and deposit slips, a credit investigation of the new account is conducted. It is not a credit check as much as it is a verification of information given to the bank by the new customer.

This is another inadequate security measure taken by banks. New York banks emphasize the verification of their new customer's employment and previous banking connections. California banks are concerned with verifying the identification of new customers. In either state, kitters satisfy the banks quite easily.

In New York, drivers' licenses are easy to obtain. One needs the name and birthdate of another person who has a license. With this minimum information, and with one of many acceptable documents bearing the person's name (a Social Security card that can be purchased from a vending machine and filled in with the appropriate name), any of the city's five Department of Motor Vehicles offices will issue a duplicate driver's license to replace one that has been "lost." The total expense for this impressive document — which California banks accept as the quintessence of documentary verification of identity — is \$3.50.

A driver's license, while easily the most impressive document, is inadequate alone for opening a new account and collateral documents are needed. But possession of a driver's license enables the kiter

to get away with second-rate supporting documents. Acceptable secondary identification may be secured at any printer's shop. For example, a fictitious industrial identification card or badge, including a photograph of the employee and a few numbers which are supposed to be his payroll code, satisfies California banks.

Check kitters often will have more than two pieces of identification but two are needed at minimum.

Returning to the Bank of America, the policy is to verify the address and employment of the new customer. Many other California banks will not go this far to verify information. Whether they do or not, the kiter is in need of an address at which to receive mail. As in New York, the kiter takes advantage of the invaluable services of telephone answering and mail drop businesses.

New York banks, for example, rely very little on identification documents but have new customers sign signature identification cards which are then mailed to the customer's employer and to a previous banking connection. When the cards are picked up at the mail drops, which front as places of employment and obscure banks, the kiter sends back excellent letters of employment and bank references.

Thus, with false documents and opened answering services, the preliminary steps for the kiting scheme have been taken.

A few brief comments to provide clearer insight into the crime and its mechanics are in order at this point. Part of the sociology of the crime is a basic difference distinguishing white collar crime from the more traditional felonies.

In the case of a check kiter, there are no attempts to overpower, disrupt, and change conditions of the crime's environment. No weapons are flaunted or implied, no hostages taken, no property is destroyed.

Instead, this white collar crime takes place within the given conditions. Kiting is a crime that operates within the parameters of the system. And prevention is not simply a matter of saying "change the system." For example, if banks were to refuse credits on uncollected funds, chaos would result along with disastrous consequences for American business.

What follows is a modest check kiting scheme involving banks in New York and San Diego. Normally, it takes ten bank working days before checks

EDITOR'S NOTE: Allan Sonnenschein is a convicted check kiter. He wrote this article for the Court as one of several conditions of probation (including restitution) imposed by Municipal Court Judge David B. Moon, Jr., sitting as a Superior Court judge. Judge Moon also sent Sonnenschein to state prison on a 90-day diagnostic study. Permission to print the article was granted by Judge Moon. Although the article has been edited for length, the style and substance have been left intact and the views and comments contained therein are exclusively those of the author. This publication expressly disavows any guarantee of their accuracy.

originating in either city will be cleared after deposit in banks on the opposite shore. A chronology of events explains the crime of check kiting:

July 1: Checking accounts are opened at Chemical Bank, Citibank and Manufacturer's Hanover Trust in New York City. Each account is opened for a nominal amount, and each will provide the kiter with checks for use in his kite in San Diego.

July 11: On Garnet Avenue in San Diego, an answering and mail service is opened in the name the kiter has on a duplicate driver's license and Social Security card, employee photo ID card and personal checks from his New York Bank.

A few blocks away, another answering and mail service is used as the address of a bogus firm, the kiter's "employer."

July 13: Checking accounts are opened in the same name at Bank of America, Bank of Commerce, United California Bank and California First Bank. Each account is opened with a cash deposit of \$100. The new customer tells bank representatives he is relocating in San Diego from New York. This is an acceptable explanation for the New York identification documents.

For the next ten days, the kiter awaits permanent checks and preprinted deposit slips. There is no more preparation to be done. The kite is almost ready to fly.

July 23: Armed with permanent checks and deposit slips, the kiter makes the following deposits:

- Three New York checks are deposited in the UCB account.
- Three more are deposited in the Bank of America account.

The total deposited in each bank is approximately \$2,000. The numbers are arbitrary, but the kiter does not want to make too many deposits of out-of-town checks lest a bank employee decide to ask questions. Now, as banks will feel more secure with checks from local banks, the kiter makes no deposits in the two remaining California banks. Not, at least, deposits of out-of-town checks.

July 24: At the Bank of Commerce and California First bank, three checks from UCB and Bank of America are deposited in each account, totalling \$2,000 per bank. UCB and Bank of America have credited the previous day's deposits of New York checks. In addition, UCB and Bank of America receive six more deposits of New York checks.

July 25: Today, the kiter's checking balance will read:

Bank of America \$4,000
UCB 4,000
Bank of Commerce 2,000
California First 2,000

The deposits of the previous day are repeated. Today, however, the kiter will receive some profits from his work. He will cash personal checks for cash at Bank of Commerce and California First. Each check will be for \$1,500.

July 26: Today, New York checks will be deposited in the accounts at the Bank of Commerce and California First Bank. UCB and BofA will receive deposits of checks from the two local banks. Also, checks for cash will be drawn on all four banks. The checks will be for \$800 at each bank.

This is an appropriate time to summarize the activities of the four days of active kiting. At this juncture the kiter will attempt to hide signs of fraud if he wishes to keep the kite going.

Bank	Total Deposited	Cash Drawn	July 27 Balance
B of A	\$8,000	\$ 800	\$7,200
UCB	8,000	800	7,200
Commerce ..	6,000	2,300	3,700
Cal 1st	6,000	2,300	3,700

July 27: To remain above suspicion, the kiter will make deposits of cash in addition to more worthless checks. Bank employees find their hearts warmed and their well-founded suspicions laid to rest with deposits of cash.

Today, UCB and BofA receive nominal deposits from the New York checking accounts, but \$500 deposited in cash makes the \$100 checks a matter of no concern. This is repeated at the other two banks, but with an important addition.

With an excellent credit rating at UCB and BofA, the other California banks receive checks from those institutions along with cash deposits. The deposits at the Bank of Commerce and California First with BofA and UCB checks total \$3,000 for each account.

Later that day, at two branches of the Bank of Commerce and California First, checks for cash are written in the amount of \$1,800 each.

July 28: At branches of BofA and UCB, checks are written in the amount of \$2,000 per bank. At the other two banks, \$1,200 is withdrawn from each account with checks for cash.

Deposits of local and New York checks continue. The totals for the first week's work are:

Bank of America and the Bank of Commerce paid the kiter, in cash, a total of \$8,100. United California Bank and California First Bank have paid the same total. Subtracting out the \$1,000 redeposited in cash and the initial \$400 to open the four accounts, the kiter has realized a first week's profit of \$14,800.

The second week of the kite is the most uncertain period. Often, fraud is recognized and, if not, the activity of the accounts may result in holds placed on them. The kiter will thus take all he can get away with in the second week.

July 30: Checks made out to cash from the four banks will be written at several branches for a total withdrawal from each account of \$2,500. Deposits, in various combinations of local and out-of-state checks will be made in the amount of \$3,000 for each account.

Let us determine that the kite comes to its end on July 31 at the close of the banking day. The following table is a realistic, and modest, result of the above kiting scheme. A final withdrawal of \$2,000 is made from each bank.

Bank	Cash Deposits	Check Deposits	Cash Withdrawn
B of A	\$600	\$13,100	\$ 8,300
UCB	600	13,100	8,300
Commerce ..	100	14,000	10,800
Cal 1st	100	14,000	10,800

The deposits of \$1,400 have brought the kiter a modest profit, in a two-week kiting scheme on four California banks, of more than \$35,000. Compare that with the less than \$10,000 realized in the average bank robbery. While any bank is able to survive the nine or ten thousand dollars it contributes to the kiter, the attitudes of bank policy-makers are something the industry will not, in the long run, be able to survive.

Check kites are no different than other groups of people. Some, for example, are greedier and bolder than other practitioners of the trade. These kitters will act upon the opportunities to steal millions, which less bold tradesmen are content to let pass by.

Computerization of bank operations opens up opportunities for white collar criminals to risk all consequences in order to take in the millions of dollars made available by manipulation of the modern, technically sophisticated bank. These more sophisticated cousins of the check kiter are at work now.

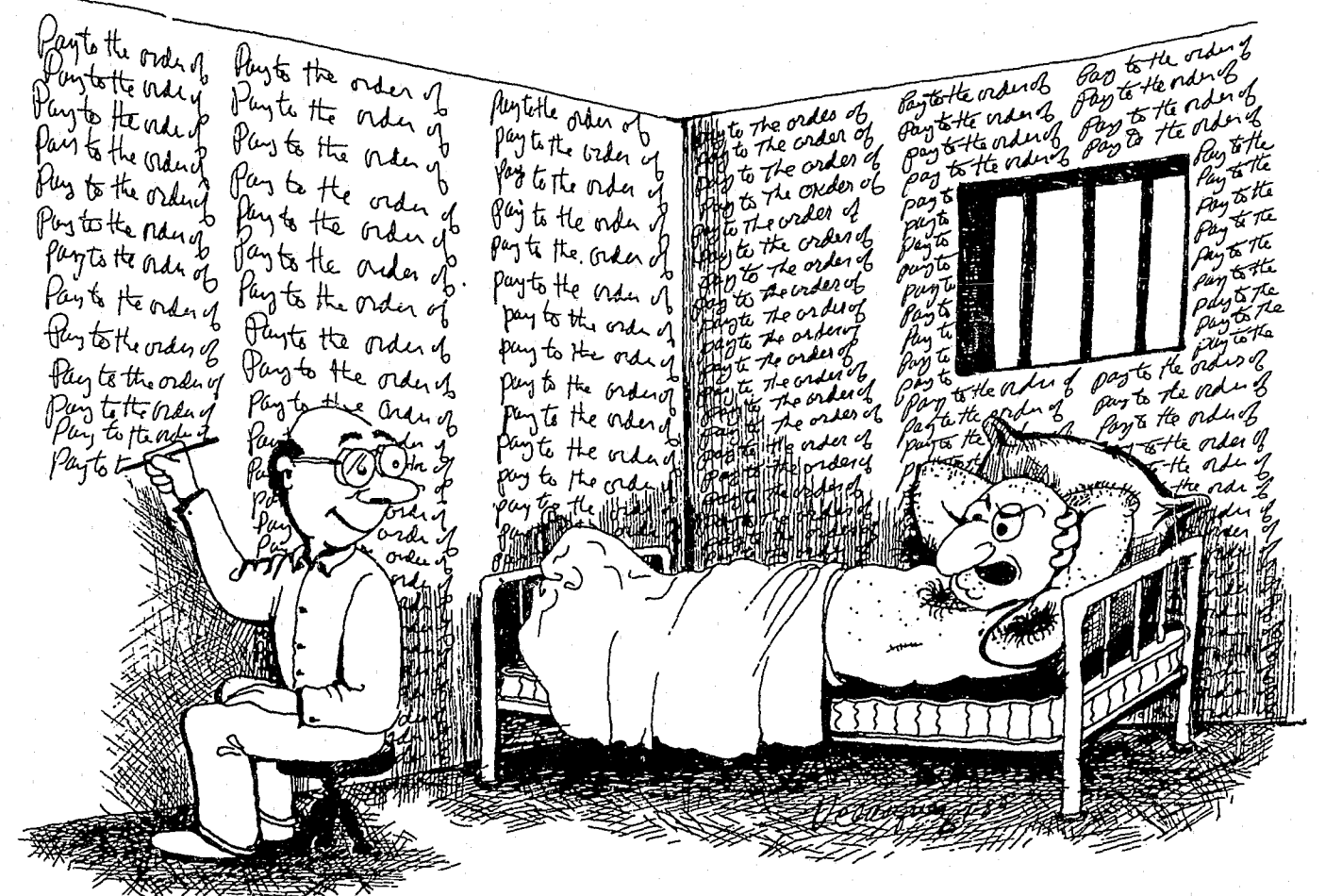
The sociology of check kiting is a present and real condition of public concern. Motivation to steal may be different for each person who becomes a thief, but in the white collar criminal's decision to violate the law the probability for success must form a part of his motivation.

Check kiting is not a random and sudden crime for the desperate individual who steals to solve financial hardship. While the kiter may act out of serious financial needs, the crime demands planning, no immediate financial rewards, and a clear and unemotional detachment in the work. Therefore, the kiter has the time and presence of mind to weigh the risks.

He perceives the risks in viewing a victim who will do little in determining his victimizer, and will not cooperate with police authorities. The kiter, also, in viewing the social factors in deciding to carry out his plan, sees a criminal justice system that ignores white collar bank robbers while concentrating its resources chasing the Bonnies and Clydes. Related to this, federal law and sentencing judges reserve the harshest prison sentences for the holdup variety of bank robbers.

White collar criminals are often caught by the authorities, but their apprehension comes not as a result of their faulty perception of social conditions for white collar crime but from poor intellectual and emotional preparedness to think and act as outlaws. Indeed, the very attributes which are needed for white collar crime, i.e., a middle class background and education, may make the individual unsuited to a life of crime.

To turn away from the lessons of a lifetime's



"If you don't cut that out, you ain't never gettin' outta here!"

socialization is not an easy action. Most white collar criminals do not think in terms of violence, alienation from family and friends, and fugitive existence. Yet, all of these aspects of criminal life may become necessary. In addition, the need for caution, a survival instinct for the more professional criminal, is easily overlooked by the white collar criminal with no past need for the discipline of caution.

It is not a matter of financial need or greed which motivates decisions to go outside the law. The nature of the crime is more important. In the case of check kiting, the very choice of victim satisfies the need of not hurting anyone in the crime. Banks are hardly objects of sympathy in American society. As a result, it is easy for the kiter to rationalize objections from a guilty conscience. Thus, in the specific case of an unsympathetic victim, moral judgment is suspended.

The immediate and practical steps which may help prevent check kiting schemes, while obvious, remain obviously ignored. It would be a simple and inexpensive measure of prevention for banks to program the names and addresses of every telephone and mail service in the area. Then, when new accounts are opened with these addresses, greater scrutiny may be placed on the new customers. The step won't end kiting, but will make it a more expensive and difficult crime for some individuals to attempt.

California banks should not rely on new customers' identification to the exclusion of more difficult to obtain sources of verification. While it may raise a civil liberty issue, requesting bank customers to agree to so-called "touch signatures," i.e., a fingerprint identification, may dissuade many from opening bogus checking accounts.

The heart of the issue, however, remains the ability to draw on uncollected funds. While it would cause a far greater problem to end the practice, within the present options a modest change in banking operations may go a long way in preventing kiting schemes. For example, for the first thirty days of new accounts, all deposits of out-of-town checks could be cleared for collectability by tele-

phone verification of banks where the checks originated. The expense may be worth the manhours and long distance charges.

Conceding the point that there are no foolproof steps which banks may take to end kiting, prevention may be strengthened by means of legal deterrents. The relative leniency in the sentencing of kitters, vis-a-vis armed bank robbers, was mentioned earlier. That must change.

The closing comments are personal observations of a convicted check kiter. Responsibility for crime must, in searches for conditions and causes, be totally assumed by the criminal. This author could place the genesis of a brief, and lackluster, white collar criminal career in his disillusionment and disappointments in the 1960's. Alienation from government during the anti-war movement days may be added to this list. There is more, however, if external causes are desired. Watergate and the relative moralism of the nation's leaders serves as the fodder of criminal justification, as do marital failures, career disappointments and more.

But the above litany counts for little. Right and wrong were never abstract blurrings in my mind. The moral distinctions taught by my parents were as real and present in my mind as were the ephemeral social conditions as I contemplated and carried out the crime.

There are no final words of insight to provide the solutions to society's ills from crime whether white collar or of any hue. However, as a thought, those concerned about white collar crime are asked to remove the emphasis placed on the rhetoric and fashionable psychological analysis of the problem. The neat systems to explain criminal and anti-social behavior are for a society which enjoys the luxury of overcoming its problems.

Prevention is located for a society seeking to combat the problem in the same place opportunity is found for the criminal responsible for the condition. Technology opened the new frontier in white collar crime, and it will close the opportunities for criminals. As the check kiter has demonstrated, it is all a matter of mechanics.

END