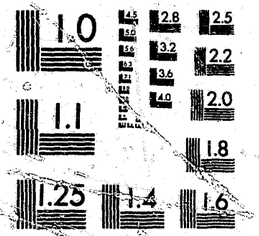

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U.S. Department of Justice
National Institute of Justice

Research on White Collar Crime

Thinking About White Collar Crime:

Matters of Conceptualization and Research

a publication of the **National Institute of Justice**

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Harry M. Bratt
Acting Director

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U.S. Department of Justice
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ABSTRACT

This paper was prepared to assist newcomers to think conceptually and theoretically about white collar crime. The paper has two parts. The first critically reviews the conceptual history of white collar crime and proposes distinctions that might alleviate some of the confusion that has plagued the usage of the term. The notion that organizations play distinctive roles in the social organization of illegality is developed and offered as a common denominator that captures many of the conceptions of white collar crime filling the literature. However, distinctions based on behavioral criteria are ultimately recommended, and three generic behavioral types — fraud, self-dealing/corruption, and regulatory offenses are described. The second part of the paper suggests a series of research questions and theoretical issues concerned with the nature and social control of white collar crime. They include consideration of the nature, organization, and social location of white collar illegality; the normative dimension of white collar illegality; the enforcement of norms proscribing white collar illegality; and the disposition and sanctioning of white collar illegality. The paper provides an extensive bibliography.

PREFACE

This is a substantially revised version of the "Background Paper on White Collar Crime" (Shapiro 1976) which was prepared about four years ago for a multidisciplinary audience of researchers and faculty involved in the Yale program in white collar illegality research. Its purpose was to assist newcomers to the area to think conceptually and theoretically about white collar crime.

During the intervening years, I have benefited from participating in the growth of the research program and learned from the experiences and insights of the researchers and faculty associated with it. I have profited as well from contacts with outside researchers and officials that a program of this magnitude generates, and especially from the innumerable lessons derived from designing, securing access, and conducting research at a federal regulatory agency in connection with the research program. These insights and perspectives are reflected in this revised paper as are new conceptual, theoretical, or empirical developments that anteceded the original version.

This paper has two parts: The first part explores the conceptual history of white collar crime and proposes distinctions that might alleviate some of the confusion that has plagued the usage of the term. The second part suggests a series of research questions and theoretical issues concerned with the nature and social control of white collar crime.

The paper has benefited from comments and suggestions made by participants in the "Faculty Seminar on White Collar Crime," at the Yale Law School in February 1976, and those of Laura Shill Schrager. Special thanks go to William Elliott, Diana Polise Garra, Jack Katz, Kenneth Mann, Albert J. Reiss, Jr., and Stanton Wheeler, for their comments and for the stimulating intellectual environment they have provided.

I. CONCEPTIONS OF WHITE COLLAR CRIME

More than thirty-five years after the introduction of the expression "white collar crime" into the criminological vernacular, the Deputy Attorney General of the United States in an address to professional criminologists remarked on the difficulty of defining the phrase and on the absence of any consistent or useful characterizations of such events (Tyler 1975, pp. 1-2). This observation is neither unique nor disputable. An examination of the various definitions of "white collar crime" and their actual usage in the literature yields fundamental inconsistencies and incompatibilities. It is unclear whether the term characterizes acts or actors, types of offenses or types of offenders; or whether it refers to the social location of deviant behavior, the social role or social status of the actor, the modus operandi of the behavior, or the social relationship of victim and offender. There are frequent disputes over whether the phenomenon is necessarily "white collar," and even more serious disagreement over whether the behavior is criminal. In this respect, the label is clearly a misnomer.

These fundamental confusions result from the fact that "white collar crime" has always been a catch-all category for social theorists, policy analysts, and law enforcement officials. It has referred to that group of offenders (wealthy, respectable persons, corporations, etc.) for whom traditional explanations of criminal behavior are not appropriate or to that group of offenses to which the criminal justice system responds differently -- if at all. The category — white collar crime — generally has been used to demonstrate the incompleteness of our knowledge, the inadequacy of our theory, or the injustice of our social control responses. Indeed it is this programmatic function that has served as the glue to unite many disparate norms, persons, and social structures. That the variance within the class of white collar crime often has been greater than that between categories of traditional crime and particular instances of white collar crime has been ignored. The relevance of the construct was its residual status and the polemical and ideological purposes which its inherent contrast with traditional crime could serve. That this residual construct was multidimensional and its elements neither defined nor enumerated was not treated as a problem. Indeed, Edwin Sutherland, the father of the white collar crime concept, admitted in his definition of the term that "this definition is arbitrary and not very precise. It is not necessary that it be precise, for the hypothesis is that white collar crime is identical in its general characteristics with other crime rather than different from it" (Sutherland 1941, p. 1120).

White collar crime is not a legal category incorporating specific offenses. Rather, it is a social construct. The placement of its conceptual boundaries often reflects the social boundaries of its users. Whether a social scientist, lawyer, law enforcement official, member of a regulatory agency, muckraker, business person, consumer, or criminal, the forms of offense most salient to one's experience vary. Even among social scientists, it is most likely that criminologists, organizational theorists, social psychologists, stratification theorists, political scientists, or economists would differ in the criteria they consider central. A least

common denominator that would capture this diversity of perspective would clearly lack depth and meaning.

The appropriate response to this situation is avoiding undue attention to the derivation of such least common denominators. However, it is neither the abandonment of generalization in favor of catering to the parochial interests of users of the white collar crime concept. The development of theory or informed policy is dependent upon generalization and comparative inquiry. However, the real payoff in this area is to move away from questions of definition and closer to concern for differentiation and analysis. The significant question is not whether two events are white collar crimes, but instead whether they possess common elements that render insights useful in thinking about the other. For example, to the social psychologist: Does information about the motivations of bank teller embezzlers illuminate research into the motivations of corporate officers who embezzle or bank officers who are engaged in self-dealing or price-fixers? To the criminal investigator or prosecutor: Are data about the investigation and sanctioning of regulatory offenses by administrative agencies useful in designing programs directed at con artists, swindlers, or tax evaders?

The following discussion considers the definition and differentiation of white collar crimes. It summarizes the major themes in the literature, presenting not only their strengths and weaknesses, but extending and occcasionally redirecting them and reorganizing the thematic terrain. The result of this exercise is not a correct and definitive all-purpose concept of white collar crime. Rather, the intent is to help the reader come to appreciate the distinctive elements of white collar crimes and to understand the limitations inherent in the selection of a particular definition.

Social Status and Social Location Criteria

A legacy of almost forty years of literature on white collar crime leaves us with essentially a single conceptual theme and variations based on characteristics of the violator and his or her social location. This theme was expressed by Edwin Sutherland as:

> . . . a crime committed by a person of respectability and high social status in the course of his occupation (1949a, p.9).

Social Status

The social status distinction was critical to Sutherland, in that he created the concept as a challenge to popular criminological theories of his day which attributed criminal motivation to the assorted pathologies of poverty. By highlighting criminal activities committed by the more affluent, he was able to demonstrate the weakness of those theories and to argue more strongly for his own theory of differential association. Although through the years, criminologists have abandoned theories based on poverty as principal explanations of criminal behavior, many have failed to abandon the link of social class characteristics to white collar crime. Twenty years after Sutherland, for example, an article in the International Encyclopedia of the Social Sciences defined white collar crime as

"lawbreaking among the middle and upper (or 'white collar') socioeconomic classes" (Clinard 1968, p. 483).

There are a number of obvious problems in developing a category of deviant behavior on the basis of the social class characteristics of its perpetrators, [1] some of which involve matters of legal policy and equal justice. The most significant problems from the perspective of social science theory, however, concern the ability of this criterion to meaningfully discriminate between disparate events at the same time that it discriminates too much.

From a theoretical perspective, the importance of social class, or other offender characteristics, for that matter, is not that it defines a particular category of illegal behavior, but rather that it affects the nature and control of that behavior. One might postulate that social class distinctions reflect differences in the opportunity for criminal behavior as well as differences in the likelihood or severity of punishment. These ideas may be tested only where class is variable, where potential differences can be contrasted between high and low socioeconomic groups. Where social class is definitionally restricted, these propositions become assertions rather than testable theoretical statements.

This is not a bizzare or unreasonable criticism. In a related area, for example, interest has centered on important social class differences in the manifestation, labeling, and treatment of mental illness (see especially Hollingshead and Redlich 1958). Yet these works did not define emotional disturbances among the upper socioeconomic class as a particular form of mental illness — "Park Avenue mental illness," for example. By allowing social class to vary across a population of the mentally ill, researchers were able to study the impact of social class on dimensions of mental illness and its treatment. In addition, they were able to explore the interaction of class and other independent variables on these cases.

The social class standard, then, excludes too much; at the same time, it differentiates too little. It accomplishes little in the way of discriminating or isolating behavior. In theory, if not in practice, affluent individuals are capable of the same range of illegal activity as their more impoverished counterparts — from murder or rape, to illegal drug use, robbery, tax evasion, embezzlement, etc. Instead it separates forms of illegality that are virtually identical, as the examples suggest, or that are structurally similar. Does one want to definitionally discriminate, for example, between medicaid fraud by doctors and that engaged in by patients; between the business executive who does not disclose perks in his tax return and the waitress who fails to disclose tips on her return? Does one take a single illegal activity reflecting the conspiracy of assorted individuals and label the activities of the wealthier participants white collar crime and those of the less wealthy traditional crime? If high status and low status persons commit the same crimes or conspire together in the commission of a crime, what discrimination is achieved by the social status standard? If it is the correlation of social status with other factors that are in turn correlated with categories of crime, then it is on these latter factors that definition should center.

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[1] See especially Newman (1958) and Quinney (1964) for more elaborate critiques of social status criteria in Sutherland's work.

Social Location

The correlation between social class and crime is powerful for polemical purposes; it is without merit for theoretical purposes. Perhaps in response to some of these criticisms, Sutherland appended the phrase "in the course of his occupation" to his definition of white collar crime, stipulating not only the nature of the offender, but also the social location of the offending behavior. The social location criterion has been popular, employed by many social scientists, including those who have rejected the social class standard.[2] It stipulates that one's offense occur in the occupational setting or when the offender is performing an occupational role.

It is unclear what the users of this definition believe they have gained by its adoption. Presumably by including only behavior that occurs in the occupational setting, the definition narows the range of criminal activity most likely to be encountered (excluding, for example, wife beating, bank robbery, mass murder). Perhaps, because the setting suggests the arena of economic transactions and exchange relationships, the users feel they have limited their concept to economic or property crimes or the violation of regulations that apply to economic or business activity. Note, however, that those who employ the definition say nothing about the normative content of violations or characteristics of the offense — they specify only social location.

Perhaps those who accept the social location standard are capitalizing on the fact that focus on occupational settings permits scrutiny of unique opportunities and means of criminal activity afforded by the roles, relationships, responsibilities, and resources available in occupational settings. The street offers limited opportunities for potential sources of income and limited strategies to secure this income. A business setting, however, affords diverse potential resources, an extended period of time to illicitly secure them, and a variety of technologies by which they can be obtained. Hence, by focusing on business, one is emphasizing the unique opportunities for criminal activity and the extent to which these opportunities affect the form of illegality that results. Unfortunately, these speculations or other accounts of the abstract benefits that accrue from centering analysis in business settings are never expressed by its users. This undoubtedly is highly desirable to many of them who can capitalize on an intuitive feeling of the criterion without having to specify what is truly distinctive about white collar crimes.

Despite the belief that distinctions based on social location are more useful than those reflecting social class, the social location standard presents its own ambiguities. First, what constitutes a bona fide occupational location? Are positions in organizations that deal in the provision of illicit goods and services — prostitution, narcotics, fences for the sale of stolen goods, distributors of pirated copies of motion pictures and phonograph records, organized crime members — occupational? Many of these activities are full time, ongoing, structured mechanisms for providing a livelihood, in accordance with traditional definitions of occupation (see, for example, Form 1968, p. 245). Are they occupational

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2 See, for example, Clinard (1952), Newman (1958), and Reckless (1973).

where the conduct of business is only partially illicit — the legitimate physician or pharmacist who also distributes narcotics or restricted drugs, or the fence, many of whose goods were acquired legally (Klockars 1974)?[3]

Even when bona fide commodities of business are legal, confusion about the nature of a bona fide occupational setting may remain. Business organizations too can serve as important resources for facilitating or covering up illegal activities. A major strategy in many confidence games or other fraudulent schemes is the creation of a corporation with a prestigious address, letterhead, etc. which purports to provide some desirable service. Where only the most gullible victims would give money to a stranger on the street, many more sophisticated victims (including Fortune 500 corporations) will send money to unknown organizations. Hence, the organizational setting may simply provide a disguise to mask the true identity and intentions of the individual offender. Do we consider these facades of occupational locations as identical to more genuine settings?

Organizations are employed not only to facilitate illegality but to cover it up as well. Perhaps the clearest, but by no means only example, is the utilization of legitimate businesses by organized crime as fronts for illicit transactions or as channels for the laudering of funds. Are the crimes of the mobster who manages a dry cleaning establishment as a front to be considered identical with those of the more typical proprietor, and are both settings to be considered stages for the commission of white collar crimes?

Without some functional delineation of what constitutes an occupational setting, the resulting definition of white collar crime becomes extremely

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3 Sutherland attempted to avoid this dilemma with his constraint that such persons be respectable. Presumably the embezzler is more respectable than the burglar, the food adulterer more respectable than the marijuana dealer, etc. Sutherland does not define the conditions for respectability nor does he suggest whether one be respectable before or after one's illegal activity has been detected. Some would argue that respectability is a status conferred on an individual by social definition and not easily stipulated in the abstract. Indeed, one of the fascinating aspects of white collar criminality is the different ability of offenders to retain respectability in the face of their behavior. How is it that a man convicted of illegal business practices is subsequently elected president of the New York Chamber of Commerce (Sutherland 1948, p. 96)? How is it that one politician charged with corruption is ruined politically, while the political advancement of another is not impeded (Farney 1978)? One man is perhaps more respectable (or more adept at managing his respectability) than the other, but are they not both white collar criminals? Generally, in the the area of white collar crime, both respectability and legitimacy are not objective characteristics of persons or organizations; rather they are a manipulated status employed as a strategic device to consummate illegality. The utilization of such criteria for definitional purposes is thus quite problematic.

broad, and includes many traditional street crimes, organized crimes, and victimless crimes. This criterion may exclude crimes of passion or one-time illegal activities, but it does little to distinguish ongoing forms of activity directed at generating illicit revenues.

At the same time that this criterion includes too much, it also excludes too much, specifically identical offenses committed outside traditional occupational settings. On the one hand, there are illegal transactions that bind parties inside and outside of occupational roles. Is the motorist who pays a bribe to a traffic policeman or meter maid a traditional criminal and the bribe recipient a white collar criminal? On the other hand, there are activities that occur in business settings which also occur outside them. Is the individual who puts a torch to his home in order to collect insurance benefits committing a crime different from the arsonist ordered to bail out a foundering business organization? Does one include fraud by the employee in declarations for workman's compensation, but exclude that by the person seeking unemployment compensation or welfare? Does one include fraud in the filing of corporate income taxes, but exclude that involved in the filing of personal income taxes? Does one exclude a host of illegal activities perpetrated by consumers, clients, beneficiaries, citizens, or debtors because these parties are behaving outside of occupational settings where their activities have direct counterparts in businesses? In short, is it the occupation per se that defines white collar crimes, or is it that an occupation affords opportunities for illicitly securing economic resources, some of which may occur in other sectors of social life?

Even if a solution to the boundaries of occupational settings were found, ambiguities about the scope of activities relevant to white collar crime would still arise. Because this definition specifies social location rather than the norms breached, many traditional forms of offense would be included. Indeed, Sutherland considered murder committed by a manufacturer in the course of strike-breaking activities to be an instance of white collar crime (1941, p. 112). Where adultery is considered a crime, extra-marital relationships between businessmen and their secretaries would also be included in this definition of white collar crime.

A wide range of offenses can occur in occupational locations. In the simple case, one finds unanticipated noneconomic offenses occurring in these locations because they provide the pressures and opportunities for victimization or consensual crimes that are found elsewhere in social life -- assaults, adultery, robbery, extortion, etc. Offenses of this nature can be rather easily disregarded in defining white collar crime. However the diversity of offenses has more significant implications. On the one hand, one finds employees realizing personal enrichment at the expense of their employers. Such cases are illustrated by embezzlement, pilferage, computer swindles, and even the expropriation of government funds by politicans to compensate special friends or family through salary payments for nonexistent work. On the other hand, one finds the employee who utilizes his or her position for personal enrichment of a kind that does not cost or harm the employing organization. This form of offense, or self-dealing, is illustrated by the corporate insider who purchases or sells securities on the basis of inside information; the bureaucrat who accepts bribes from seekers of licenses for expeditious processing of applications; or the

restauranteur who accepts gratuities from liquor companies for stocking its brand. In the first example, the employee expropriated some of a fixed set of corporate resources whose benefit to the offender generated a commensurate loss to the organization. In the second example, resources, like information, power, opportunities, extra gratuities, are not fixed in quantity. These resources, generated by organizational position, may benefit the employee without any specific or commensurate loss to the organization or to other parties. In the language of game theory, the former resources, fixed in quantity, are labeled "zero-sum;" resources of the latter kind are labeled "variable sum."

Another kind of offense is derived from occupational role behavior without some inappropriate or illicit benefit accruing to persons in these positions -- fixing prices, paying bribes, or falsifying reports, for example. Finally, offenses can be characterized as providing enrichment to both individual and organization. Examples of this latter phenomenon are somewhat more obscure, but can include employees who are directed to fraudulently tout or manipulate the stock of their company, enhancing not only the economic status of the organization but their personal stock holdings as well. Employees who accept kickbacks or other incentives for participating in activities required by the organization (for example, padding expense accounts to generate monies for slush funds as well as for personal profit) are a second example.

Ambiguities inherent in utilizing social location as a definitional criterion derive from two sources: (1) from one's conception of what constitutes an appropriate social location, and (2) from one's conception of what activities that occur in this location are appropriate for further scrutiny. The latter ambiguity derives in part from the fact that, up to this point, conceptions of white collar crimes have been entirely individualistic, yet many of the common examples of white collar crimes are inherently organizational. It is this very relationship of persons and organizations in the commission of illegalities, implicit though not articulated by users of the social location criterion, that provides the major insight about white collar crime derived from this perspective.

The Role of Organizations in Illegality

Excessive concern for individual behavior in traditional definitions of white collar crime[4] has resulted in a neglect for its organizational dimension. As previous discussion has suggested, the organization is implicit in traditional definitions, but it enters through the back door -- through correlation to social location criteria. The role of organizations in illegality must be made explicit. Organizations generate new occasions for illegality, many of which are different from traditional criminal opportunities. From this perspective, white collar crime pertains to the exploitation of these opportunities, the nature of which is explored in the following paragraphs.

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[4] Some recent work makes explicit reference to the role of organizations in illegality (see, for example, Schrager and Short 1978, Ermann and Lundman 1978b). These perspectives are examined later in this paper.

First, and most obviously, like their individual counterparts, organizations serve as victims of crime.[5] Because of their valuable resources and their relatively permeable boundaries, organizations provide easy and profitable targets of theft. Because many organizations are housed in public or semi-public places, ready access to outsiders is afforded, facilitating shoplifting-type behavior. Access to organizational resources must be afforded to its various insiders — employees, agents, managers, directors, consultants -- thus permitting opportunities for thefts that involve embezzlement, pilferage, or more indirect forms of theft such as expense account padding or personal use of organizational property. Opportunities for theft vary across organizations because of differences in protecting their boundaries, the nature of the resources available (consumer goods or cash may be more vulnerable to theft than sophisticated equipment, information, or services), the social organization of the work force, and the amount of discretion over resources vested in organizational roles. Nonetheless, although the opportunities may be greater, the thefts more profitable, and the offenders of different backgrounds when organizations are victimized, these illegalities do not differ in kind from those directed at individuals, households, and other small groups or collectivities.

Second, organizations increase opportunities for crime not only because of the expanded pool of resources and commodities available, but because of the scope of economic transactions they generate. The development of organizations as economic actors has paralleled the evolution from an economic system based on face-to-face transactions to a system in which the interaction between buyer and seller are mediated by agents, middlemen, attorneys, credit companies, the mass media, applications, etc. This expanded scope of transactions has resulted in predominantly disembodied transactions and social networks that intervene between participants. The impersonal nature of transactions facilitates abuse. It permits highly misleading advertising and promotional materials that characterize a consumer good, investment, charity, or other commodity to "buyers" who may be unable to see the "good" or test the product. It also permits misrepresentations by parties that seek the services or benefits of an organization -- applicants for government benefits, for insurance claims, for admission into graduate or professional schools, for bank loans. The possibilities of abuse are highly variable in these examples. They are all characterized, however, by situations in which information must flow between the parties before the transaction can be completed. Because of the physical, social, and temporal distance between parties, distortions of information may be likely anyway, but intentional distortions are facilitated. The chances for abuse, then, are inversely related to the opportunities to test this information, which vary according to the nature of the commodity, the nature of the distance, and whether representations pertain to discrete or continuing events.

Third, organizations are not simply vast repositories of resources and settings for economic transactions. Many organizations are highly dynamic economic actors. They create new commodities and new opportunities and their activities have economic impact. Organizations may disseminate scarce

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5 Indeed the American Management Association considers "white collar crime" as non-violent crimes against business (Sheridan 1978, p. 41). This concept apparently has some support from former U.S. Attorney General Griffin Bell (Bell 1978).

resources: licenses, taxicab medallions, admission to professional schools, contracts for the purchase of goods, and bank loans. Furthermore, they may restructure opportunities for others. Legislatures or administrative agencies, for example, through the passage of tax legislation, zoning provisions, tariffs and duties, may permit or destroy businesses subject to their actions. The decision of a large corporation to relocate its business or enter a new line of business has an impact on other parties highly dependent upon its activities.

This capacity of organizations to create or alter opportunities facilitates other forms of abuse. Parties may seek to capitalize on opportunities created by organizational behavior. Where offenders are organizational insiders, such abuse is labeled self-dealing or conflict of interest. Self-dealing is illustrated by bankers who extend generous loans or permit exhorbitant account overdrafts to themselves and associates or who utilize the bank's correspondent accounts in other banks to secure personal loans; managers of large corporations who arrange organizational purchases and sales to other companies in which they have a financial interest; the allocation of pension fund investments to risky underworld or Las Vegas establishments in which pension fund trustees or their associates have a financial interest; or the practice of "scalping" in which investment advisors recommend that their clients purchase stock which they also hold, thus expecting their clients' purchases to appreciate the value of their own stock.

Abuses by persons outside of these organizations is labeled bribery or corruption. Outsiders utilize positive or negative incentives to induce insiders to direct allocations or opportunities to them. Bribes and kickbacks are regularly paid to government bureaucrats of all kinds for licenses, permits, entitlements, contracts, and the like. The scandal in the General Services Administration (GSA) is but one dramatic example. Investigators discovered that large numbers of GSA employees at all levels were receiving bribes and kickbacks in order to obtain contracts, to collect on work never performed and on merchandise ordered but never received (Hyatt 1978, "List" 1978). But such monies also are paid to persons in private organizations — to loan officers, school admisssion officers, to supermarket managers to stock and attractively shelve a particular product, to restauranteurs to stock a certain brand of beer, to purchasing agents, etc.

Abuses of organizational opportunities differ from those discussed previously: a quantifiable commodity was expropriated; a definable loss was generated; harm was more apparent; victims were more easily specifiable in the abuses discussed earlier. The latter abuses, however, pertain not to unauthorized expropriations of resources, but rather to the reasons for acting on fully authorized transactions or making self-serving decisions. It becomes difficult to specify harm or loss to the organization where the transactions were necessary, illicit or not — instances, for example where students had to be admitted, contracts made, goods purchased, licenses extended, and legislation passed. The difficulty of specifying harm, however, does not ameliorate the presence of abuse. Parties exploit their relationships to organizations for personal gain. Because they are able to secure enrichment without generating specifiable loss to the organization, they are probably better able to conceal their activities. The association

between white collar crime and positions of power derives from this enhanced ability of offenders to exploit the dynamic features of an organization as they move up its hierarchy.

Fourth, the examples discussed so far pertain to the abuse of normal practices of organizations for personal or organizational enrichment. However, as noted earlier, organizations may exist solely to facilitate or cover-up illegal activities. Organizations provide parties an entree to participate in transactions unavailable to individuals. They can be created and dissolved at will; their nature, size, and credentials easily manipulated. One example is the bankruptcy scam, in which an organization is created along with a credit rating. Merchandise and supplies are purchased on credit and subsequently converted into cash. The business then claims bankruptcy and the "operators" escape with the assets (DeFranco 1973). Con games routinely are facilitated by organizations that do not exist, or that perform a non-existent service. Organizations, then, provide a legitimacy, a channel for transactions that otherwise would not occur. Organizations also provide the means of covering-up illegalities by circulating, laundering, and concealing funds; masking personal identities; and diffusing responsibility for or knowledge of illegalities.

Fifth, a final means by which organizations create opportunities for illegality occurs at a different level than the previous examples. Organizations are subject to specialized social norms, the violation of which constitutes illegality. The previous examples suggested opportunities for abuse given existing norms. This section is concerned with the expansion of norms and their content as they apply to organizations. Norms apply to the relationships between organizations -- those that protect competition, that prohibit price-fixing, bid rigging, allocation of markets, patent and copyright infringement, kickback and referral schemes between practitioners, etc. They concern the products of business activity — their safety, morality, and necessary testing. They pertain to the course of business activities — safety conditions and benefits to employees; environmental impact; equal opportunity in recruitment, hiring, and promotion of personnel. Because social systems generate special norms that are idiosyncratic to organizations, organizations create opportunities for illegality by generating norms capable of being broken.

In summary, organizations create opportunities for illegality (1) by serving as wealthy and relatively accessible victims; (2) by expanding the scope of transactional systems and generating impersonal transactions and their related forms of abuse; (3) by creating and allocating resources and opportunities, the exploitation of which is desirable to organizational insiders and outsiders; (4) by providing a strategic device to facilitate and cover-up illegalities; and (5) by conditioning the development of new normative prescriptions capable of breach. Offenses may reflect the victimization of the organization by the individual, the exploitation of organizational opportunities for individual enrichment, the collaboration of organization and individual in illegality, or the breach of norms pertaining to organizational behavior by organizations and persons in organizational roles. In any case, organizations multiply the opportunities for violation, the strategies of offense, and the chances of cover-up. It is this new stage for the drama of violative activity that is implicit in social location, and it is the drama itself that is the substance of white collar crime.

Discriminating Offenses in Organizational Contexts

Differentiating Individuals, Organizations, and their Social Locations

Perhaps it makes sense to choose as a preliminary criterion the stipulation that white collar illegalities occur in some organizational context, although this criterion is extremely general. It includes business and non-business settings. Violations that pertain to government, non-profit organizations, associations, educational institutions, religious groups, and the like, would be included in this definition. Furthermore, the stipulation does not require that the violation be made by an organization or occur in an organizational role — only that organizations be involved in the violative activity. Thus, the case of the insurance company that defrauds consumers by promising non-existent benefits reflects white collar illegality. So too does the case of the policy holder who defrauds the insurance company by submitting false claims for benefit. Organizations may be neither victim nor violator, but simply the medium for illegality by other parties. This case may be illustrated by self-dealing, the utilization of organizational position to create or direct benefits to insiders at no direct cost to the organization. For example, in inside trading, a corporate insider utilizes non-public information about corporate prospects and plans derived from his or her position to guide personal stock market investments. The victim in this case is the stockholder who traded with the insider without knowledge of this inside information.

Perhaps the only events commonly thought of as white collar crimes that would be excluded by this standard are abuses that occur in face-to-face interactions between individuals — very simple con games, "consumer" type frauds in the sale of personal property or illicit goods or services. The cases included are enormous, however, and further discrimination is essential. The most common theme in the literature reflects a concern for differentiating the illegal activities of individuals and those of organizations, and the development of a strategy for separating these actors where illegality is embedded in organizational contexts. Generally, these strategies consider either the beneficiary of illegality ("cui bono") or organizational goals.

Employing a "cui bono" perspective, users[6] seek to determine the ultimate beneficiary of illegal activity, and generally divide these activities into categories of benefit to the individual with concomitant harm to the organization (for example, embezzlement), and benefit to the organization irrespective of individual benefit (for example, price-fixing). Clinard and Quinney (1973, p. 188) label the former "occupational crime" and the latter "corporate crime." Many of these users limit their analyses to corporate crime. These distinctions do not specify whether differentiations are to be based on intended or actual beneficiaries. This concern is not a frivolous one; the possibility of "unintended consequences of purposive social action" (Merton, 1936) must be considered. In any event, this criterion requires either a deep "psychological" profile of law violators if intention is salient or an extended follow-up of violations if outcome is salient, both rather cumbersome activities for definitional purposes.

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[6] See, for example, Hartung (1950), Bloch and Geis (1962), Clinard and Quinney (1973), Meier (1975).

The "cui bono" notion is essentially an individualistic one; it simply sorts out individual behaviors according to their beneficiaries. As Schrager and Short noted in their critique of white collar crime theories, these theories "view the individual as a criminal agent, whether actions are undertaken on behalf of, outside of, or against organizations. Yet it is often impossible to determine individual responsibility for illegal actions committed in accordance with the operative goals of organizations" (1978, p. 408). The distinction based on organizational goals, though related to the concern for beneficiaries, examines the organizational context in which illegal activity is located. The perspective shifts from a scrutiny of individuals and considers whether illegality has organizational sanction.

Schrager and Short define "organizational crimes" as "illegal acts of omission or commission of an individual or group of individuals in a legitimate formal organization in accordance with the operative goals of the organization, which have a serious physical or economic impact on employees, consumers, or the general public" (1978, pp. 411-12). For purposes of this discussion, the clause pertaining to impact can be ignored. The central components are the location of illegal behavior in a "legitimate formal organization" and behavior in accordance with "operative organizational goals." An operational definition of legitimacy is extremely problematic, a matter discussed earlier. Nonetheless, this standard presumably would exclude illegalities committed in the context of a con game, where organizational facades are created to facilitate crimes, or where organized crime or other illicit organizations are involved. Also, the criterion concerned with operative goals presumably would exclude self-dealing activities of individuals which do not benefit the organization.

In a widely read monograph on white collar crime, Herbert Edelhertz (1970) specified four categories of offense: (1) "personal crimes" enacted by individuals on an ad hoc basis for personal gain in a non-business context (i.e. tax fraud); (2) "abuses of trust" enacted by persons in the course of their occupations in violation of their duty of loyalty and fidelity to employer or client (i.e. embezzlement); (3) "business crimes" incidental to and in furtherance of business operations, but not their central purpose (i.e. antitrust); and (4) "con games" or white collar crimes which are the central activity of business (i.e. ponzi schemes) (1970, pp. 19-20). Figure 1 provides a more detailed list of examples of these categories. The implicit distinctions underlying this typology follow directly from the elements of the Schrager and Short definition,[7] concern for organizational goals, on the one hand, and organizational legitimacy, on the other. They consider whether behavior is individual or organizational and whether or not it occurs in a legitimate business setting.

John Meyer (1972) employed similar distinctions in specifying types of "occupational offenses." His categories, reminiscent of those proposed by Edelhertz, include "structural," "situational," and "ancillary" offenses, corresponding more or less to: "business crimes," "con games," and a

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[7] Of course, the Edelhertz typology preceeded the Schrager and Short definition by eight years. This observation pertains to similarity, not developmental sequence.

FIGURE 1

Categories of white-collar crimes (Excluding organized crime)

A. *Crimes by persons operating on an individual, ad hoc basis*

1. Purchases on credit with no intention to pay, or purchases by mail in the name of another.
2. Individual income tax violations.
3. Credit card frauds.
4. Bankruptcy frauds.
5. Title II home improvement loan frauds.
6. Frauds with respect to social security, unemployment insurance, or welfare.
7. Unorganized or occasional frauds on insurance companies (theft, casualty, health, etc.).
8. Violations of Federal Reserve regulations by pledging stock for further purchases, flouting margin requirements.
9. Unorganized "lonely hearts" appeal by mail.

B. *Crimes in the course of their occupations by those operating inside business, Government, or other establishments, in violation of their duty of loyalty and fidelity to employer or client*

1. Commercial bribery and kickbacks, i.e., by and to buyers, insurance adjusters, contracting officers, quality inspectors, government inspectors and auditors, etc.
2. Bank violations by bank officers, employees, and directors.
3. Embezzlement or self-dealing by business or union officers and employees.
4. Securities fraud by insiders trading to their advantage by the use of special knowledge, or causing their firms to take positions in the market to benefit themselves.
5. Employee petty larceny and expense account frauds.
6. Frauds by computer, causing unauthorized payouts.
7. "Sweetheart contracts" entered into by union officers.
8. Embezzlement or self-dealing by attorneys, trustees, and fiduciaries.
9. Fraud against the Government.
   (*a*) Padding of payrolls.
   (*b*) Conflicts of interest.
   (*c*) False travel, expense, or per diem claims.

C. *Crimes incidental to and in furtherance of business operations, but not the central purpose of the business*

1. Tax violations.
2. Antitrust violations.
3. Commercial bribery of another's employee, officer or fiduciary (including union officers).
4. Food and drug violations.
5. False weights and measures by retailers.
6. Violations of Truth-in-Lending Act by misrepresentation of credit terms and prices.
7. Submission or publication of false financial statements to obtain credit.
8. Use of fictitious or over-valued collateral.
9. Check-kiting to obtain operating capital on short term financing.
10. Securities Act violations, i.e. sale of non-registered securities, to obtain operating capital, false proxy statements, manipulation of market to support corporate credit or access to capital markets, etc.

Source: Edelhertz (1970, pp. 73-75).

11. Collusion between physicians and pharmacists to cause the writing of unnecessary prescriptions.
12. Dispensing by pharmacists in violation of law, excluding narcotics traffic.
13. Immigration fraud in support of employment agency operations to provide domestics.
14. Housing code violations by landlords.
15. Deceptive advertising.
16. Fraud against the Government:
    (*a*) False claims.
    (*b*) False statements:
        (1) to induce contracts
        (2) AID frauds
        (3) Housing frauds
        (4) SBA frauds, such as SBIC bootstrapping, selfdealing, cross-dealing, etc., or obtaining direct loans by use of false financial statements.
    (*c*) Moving contracts in urban renewal.
17. Labor violations (Davis-Bacon Act).
18. Commercial espionage.

D. *White-collar crime as a business, or as the central activity*

1. Medical or health frauds.
2. Advance fee swindles.
3. Phony contests.
4. Bankruptcy fraud, including schemes devised as salvage operation after insolvency of otherwise legitimate businesses.
5. Securities fraud and commodities fraud.
6. Chain referral schemes.
7. Home improvement schemes.
8. Debt consolidation schemes.
9. Mortgage milking.
10. Merchandise swindles:
    (*a*) Gun and coin swindles
    (*b*) General merchandise
    (*c*) Buying or pyramid clubs.
11. Land frauds.
12. Directory advertising schemes.
13. Charity and religious frauds.
14. Personal improvement schemes:
    (*a*) Diploma Mills
    (*b*) Correspondence Schools
    (*c*) Modeling Schools.
15. Fraudulent application for, use and/or sale of credit cards, airline tickets, etc.
16. Insurance frauds
    (*a*) Phony accident rings.
    (*b*) Looting of companies by purchase of over-valued assets, phony management contracts, self-dealing with agents, inter-company transfers, etc.
    (*c*) Frauds by agents writing false policies to obtain advance commissions.
    (*d*) Issuance of annuities or paidup life insurance, with no consideration, so that they can be used as collateral for loans.
    (*e*) Sales by misrepresentations to military personnel or those otherwise uninsurable.
17. Vanity and song publishing schemes.
18. Ponzi schemes.
19. False security frauds, i.e. Billy Sol Estes or De Angelis type schemes.
20. Purchase of banks, or control thereof, with deliberate intention to loot them.
21. Fraudulent establishing and operation of banks or savings and loan associations.
22. Fraud against the Government
    (*a*) Organized income tax refund swindles, sometimes operated by income tax "counselors."
    (*b*) AID frauds, i.e. where totaly worthless goods shipped.
    (*c*) F.H.A. frauds.
        (1) Obtaining guarantees of mortgages on multiple family housing far in excess of value of property with foreseeable inevitable foreclosure.
        (2) Home improvement frauds.
23. Executive placement and employment agency frauds.
24. Coupon redemption frauds.
25. Money order swindles.

combination of "abuses of trust" and "personal crimes," respectively (1972, pp. 41-45). Meyer further differentiates structural offenses (i.e. "business crimes") on the basis of the hierarchical position of the offender in the organization, distinguishing executors, functionaries, and managers.[8]

Although the terminology differs somewhat between the works cited above, the underlying distinctions are very similar. They are reflected in the four-fold table below. As Table 1 indicates, these works vary in the fineness of detail with which offenses are differentiated and in the subset of terms on which their attention focuses. All four, however, share the

Table 1

	INDIVIDUAL OFFENSE	ORGANIZATIONAL OFFENSE
BUSINESS CONTEXT	"abuses of trust" (HE) "occupational crime" (C&Q)	"business crimes" (HE) "organizational crimes" (S&S) "structural offenses" (JM) "corporate crime" (C&Q)
	"ancillary offenses" (JM)	
NON-BUSINESS CONTEXT	"personal crimes" (HE)	"con games" (HE) "situational offenses" (JM)

HE: Edelhertz (1970) S&S: Schrager and Short (1978)
JM: Meyer (1972) C&Q: Clinard and Quinney (1973)

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8 When enacted by those low in the organizational hierarchy, usually in order to reduce the actor's input to the organization while maintaining his or her level of compensation, these offenses are "executor offenses." They are exemplified by the use of the "tap" in an aircraft plant (Bensman and Gerver 1963). "Functionary offenses" are enacted by bureaucrats at the level of middle management, who, through coordinative responsibilities, have recourse to deviant activities that are functional to the organization. "Managerial offenses" are perpetrated by those atop the organizational hierarchy, whose purview spans the interorganizational environment, and whose deviance can pertain both to endogenous and exogenous organizational systems. The techniques of occupational crime involve compliant cooperation for the executor, coordination for the functionary, and policymaking for the manager.

same distinguishing criteria, and therefore the consequences of the ambiguities of these criteria. Earlier discussion considered the operational difficulty as well as the problem of differentiating business from non-business contexts. Additional problems with this typology concern its overall discriminatory power on the one hand, and the difficulty of distinguishing the organizational goals that lie at the heart of the differences between individual and organizational offenses on the other hand.

At an intuitive level, the organizational goals criterion seems to be a useful one. However, what does it mean for behavior to be in accordance with operative organizational goals? In a slightly different context, Ermann and Lundman (1978b) specified the conditions for organizational deviance. For deviant behavior to be attributed to the organizations in which it occurs rather than to individual members, (1) the activity must "find support in the norms of a given level or division of the organization" (p. 57); (2) the activity must "be known to and supported by the dominant administrative coalition of the organization" (p. 57); and (3) "the socialization of new members must include inculcation of norms and rationalizations supportive of such an action" (p. 58). In order to determine whether illicit behavior is organizational, then, one must possess considerable information about organizational norms, organizational socialization, and the extent of knowledge about that behavior across the organizational leadership hierarchy.

But this is the very problem. The boundaries of organizational norms are incredibly unclear. Although blatant sustained embezzlement of substantial corporate funds may be clearly proscribed, the status of related offenses is considerably less clear. The recent clamour over whether the charges leveled at former U.S. Budget Director Bert Lance related to the use of his position in several Georgia banks (including suggestions of over-draft privileges, use of the corporate plane for personal trips, creation of accounts at various banks with bank funds to enhance his personal ability to borrow money, etc.) are within the realm of "normal banking practice," is illustrative of the extent to which organizations are unclear about prohibitions related to self-dealing, the consequences of which may be harmful to these organizations (Horvitz 1977, Rowe 1977, Miller 1979a). It has been argued, for example, that some employers intentionally underpay their personnel because of expectations that they will be compensated by pilferage and theft. Presumably, then, pilferage is tolerated; it is its excesses that are illegal.

The cover-up of illegality is an inherent quality of the illegality itself, making it impossible to ascertain the extent of the knowledge of and support for law-breaking within an organization. When persons engage in illegality presumably for the benefit of the organization, the ability to find justifications for their behavior in some occupational code is even less likely. By the very nature of cover-up and the desire to spread responsibility for illegality, a rather complex network of delegation and obfuscation, or as Jack Katz (1979a) has suggested, "concerted ignorance," is constructed to make ambiguous individual and corporate involvement in illegality. One wonders how it is possible operationally to discern whether such behavior is in accordance with organizational goals when no evidence exists that such behavior has been required.

One kind of criticism leveled at the typology, then, pertains to problems of operationalization. A second criticism, reminiscent of that applied to the use of social location as a definitional component, pertains to its discriminatory power. Examination here of problems of discrimination will concentrate on Edelhertz's work since it is the most explicit and the richest of the studies considered. One problem pertains to the extreme variation within each of his categories. Edelhertz's list of examples presented in Figure 1 provides some evidence of this mix. Business crimes include, for example, such disparate cases as tax and antitrust violations, commercial bribery, consumer fraud, fraud against the government or financial institutions, and securities, housing code, and food and drug violations. This problem can be remedied by adding additional standards to the criteria.

More troubling is the fact that the categories sometimes differentiate identical behavior. For example, both individuals and organizations engage in tax violations or in misrepresentations in the application for credit and insurance or the qualification for benefits and services, and presumably for the same reasons. Yet these activities are located along the diagonals of Table 1: "personal crimes" versus "business crimes." Distinctions between "business crimes" and "con games" may be more imagined than real. Except for the fact that the former have achieved some actual or contrived institutional legitimacy, many offenses occurring in both contexts are identical. Differences may be a matter of degree in the extent of "falsity" of misrepresentations, but are not necessarily a matter of kind.

Similarly, the behavior of individuals may not differ in kind when they move from non-business to business contexts. Individuals are involved in a variety of social networks and relationships outside of their occupation which provide similar opportunities for abuse. Individuals who serve as trustees, for example, have many of the same opportunities for embezzlement as those who serve as employees. Individuals both in and out of business often assert their eligibility for particular benefits, and do so by misrepresenting their status. The employee pads his or her expense account or falsifies the numbers of hours worked; the individual lies on his or her tax return, application for welfare, food stamps, or insurance compensation. If one compares some of the other pairs of cells in Table 1, similar overlaps could be noted.

Characteristics of Behavior

Consideration of the social context of illegality — whether individual or organizational, business or non-business — provides important insights about the structure and opportunities for law-breaking. However, because this criterion refers to the setting of illegality rather than the nature of violative behavior, it serves as a rather confusing distinction. As was noted, it includes a range of disparate activities yet excludes some that are virtually identical to some of those listed. That is so because social context and violative behavior are correlated -- certain behaviors are more or less likely in certain settings than in others — but there is no absolute association of behavior and context. Since, presumably, white collar crime is a category of behavior, definitions that refer to social context at best can be approximations. In retrospect, it seems patently obvious that definitions of a behavior should consider elements or dimensions of this behavior. Such attempts are complicated by the absence of a normative or legal definition of white collar crime and the difficulty of deriving a

least common denominator for so many disparate events.

Deception and concealment. Conceptions of white collar crime concerned with characteristics of the illegal activities themselves are rarely found in the literature. A significant exception is the definition of white collar crime proposed by Herbert Edelhertz:[9]

> . . . an illegal act or series of illegal acts committed by nonphysical means and by concealment and guile, to obtain money or property, to avoid payment or loss of money or property, or to obtain business or personal advantage. (1970, p. 3)[10]

What is critical about this idea is that it pertains to the nature of illegal activities and their methods of operation. The category of white collar illegality is limited by characteristics of the means by which they are executed: nonphysical methods, concealment, and guile.

Edelhertz further refines his discussion by suggesting that white collar crimes have the following elements:

(a) Intent to commit a wrongful act or to achieve a purpose inconsistent with law or public policy.
(b) Disguise of purpose or intent.
(c) Reliance by perpetrator on ignorance or carelessness of victim.
(d) Acquiescence by victim in what he believes to be the true nature and content of the transaction.
(e) Concealment of crime by —
    (1) Preventing the victim from realizing that he has been victimized, or
    (2) Relying on the fact that only a small percentage of victims will react to what has happened, and making provisions for restitution to or other handling of the disgruntled victim, or
    (3) Creation of a deceptive facade to disguise the true nature of what has occurred (1970, p.12).

The "concealment and guile" criteria are reflected in two of these elements: (b) disguise of purpose and (e) concealment of the violation. Disguise of purpose "pertains to the character of the offender's conduct or activity in implementing his plan" (1977, p.22). Concealment of the violation, on the other hand, occurs after the commission of a crime, to

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9 The distinctions attributed to Edelhertz in the previous section reflected criteria he proposed to differentiate the phenomena captured by his definition. These criteria are not themselves elements of his definition.

10 Two related definitions antecede that proposed by Edelhertz. Ogren (1973, p. 59) considers white collar crime as "a broad range of non-violent offenses and offenders, where cheating, dishonesty, or corruption are the central elements." The working definition of the U.S. Department of Justice includes ". . . classes of non-violent illegal activities which principally involve traditional notions of deceipt, deception, concealment, manipulation, breach of trust, subterfuge or illegal circumvention" (Civiletti, 1978, pp. 1-2).

coverup either its recognition as wrongful activity or the identity of the perpetrators, whether temporarily or permanently (1977, p. 24-26). Disguise, then, relates to the implementation or consummation of a crime, it is "part of the manner and means by which the fraud is committed" (1977, p.26). Concealment pertains to activity separate from and generally subsequent to that central to implementation. Edelhertz notes that often disguise and concealment overlap, particularly where violations are continuing, since continued implementation requires maintenance of the facade of respectability, but he is careful to treat these events as distinct. He further notes that the importance, degree of attention to, and sophistication of disguise versus concealment vary by crime.

Herein lies the problem. Although it may be the case that concealment is a rather common or in fact universal element of white collar crime according to Edelhertz (1977, p. 24), disguise is not nearly as common. Where the structure of illegal activity involves direct transactions between offenders and victims as in cases of fraud, disguise is a critical element to secure the participation of the victim. However, there are a large number of crimes that require no direct interactions with victims. These crimes may include bribery, corruption, kickback schemes, price-fixing, bid-rigging, and the like. For these offenses, the implementation is not disguised. There is a general candor about the nature of price-fixing, kickbacks, or bribe agreements between colluding parties. Indeed, disguise of the purpose of transaction would probably result in failure to consummate it. The commission of many regulatory offenses is not disguised either, particularly when violation reflects evasion rather than some affirmative action — failure to file reports, to register, to meet safety or environmental standards, etc. For illegal transactions of these kinds, deception is necessary in the cover-up, not in the stages of implementation.

In a more intermediate category, one finds offenses reflected in embezzlement or self-dealing in which the offender's position in an organization provides access to commodities without interaction with other parties. An embezzlement does have a direct victim, the organziation, but if it can be committed without any direct interaction with other employees, disguise may be unnecessary. The need for disguise is variable in this context. It depends on the organizational position of the offender, the degree of his or her interdependence with other personnel, and the nature of the commodity "expropriated" or "employed" for personal use. For persons at the top of organizational hierarchies, placing one's hand in the till may suffice as a strategy of implementation. At lower positions, some disguise may be necessary. For example, rather than simply expropriating monies, a clerical employee of the U.S. Department of Transportation had checks intended for the Atlanta subway system issued to himself (Robinson 1977). Bank loan officers may create fictitious individuals to whom bank funds are purportedly directed as a means of expropriating these funds. In order to implement these offenses, then, disguise was necessary. Where the desired commodity is not a specified and controlled quantity, disguise may be unnecessary. Self-dealing may pertain to the abuse of organizational information for personal profit, for example. When an insider invests in property on the basis of knowledge of future organizational expansion, he or she purchases this property at the price requested. Disguise is irrelevant since he or she is engaging in a presumably legal transaction.

In other words, for some forms of offense, disguise may be a necessary condition of implementing a crime; for others, it may be unnecessary; and for still others, the necessity of disguise may vary by characteristics of the offender and the commodity involved. Hence, if analysis pertains only to implementation behavior, only a subset of the offenses captured by Edelhertz's definition would be subject to inclusion. But that causes us to examine a critical assumption of his argument that "concealment of the crime itself, from the victim as well as from law enforcement agencies, is always an objective of the white-collar offender as well as an element of the crime itself" [Edelhertz's emphasis] (1977, p. 24). Clearly were this assumption not valid, the offenses that lacked disguise in implementation might be excluded from his definition of white collar crime.

The ubiquity of cover-up of illegality is an empirical question, however. Clearly the degree (if not the necessity) of cover-up activity is variable. Where the offense is ongoing or where the likelihood of detection is high, there may be considerable attention given to cover-up. One might imagine, however, that tax offenders in a 1 percent audit category would be less likely to cover up their violations than those in a 91 percent category, if audit probabilities were known. Indeed, given the infrequency of social control responses to illegality, cover-up simply may be a costly and unnecessary extravagance. The likelihood of detecting violation and/or imposing sanctions on detected violations, even without any concealment, may be too low. Schrager and Short describe, for example, the case of a construction company which failed to shore a trench, in violation of the law, resulting in the death of an employee. In this case, prior to the accident, Occupational Safety and Health Administration (OSHA) inspectors "not only observed the trench; they allowed work to continue without the removal of the hazard" (1978, p. 409). For a variety of regulatory violations, especially, concealment may be absent, either because of the unlikelihood of enforcement or because of the naivete of offenders who are unaware that their behavior constitutes a violation.

As one explores more fully the ambiguities inherent in the Edelhertz definition while at the same time appraising the forms of behavior he suggests it includes, essentially three types of violation can be observed: fraud, self-dealing, and regulatory offenses. Deception is inherent in the fraud category; it is not a necessary component of self-dealing or regulatory violations. All three types of violation have the potential for concealment or cover-up — cover-up activities are important components of the offenses, but not distinguishing features. As ideal types, these offense categories are separate and distinct. In actual practice, illegal behavior may include combinations of all three kinds of violation.

Fraud. The category of fraud is perhaps the clearest. It involves the use of deception, the misrepresentation of status, experiences, commodities, or future events for the purpose of diverting economic assets from the receivers of misrepresented information to its sources. The examples are diverse, including con games, benefits fraud (eligibility for welfare, food stamps, insurance), consumer fraud, misleading advertising, securities fraud, misrepresentations of qualifications and credentials for employment or educational admission, fraud in scientific research, misrepresentations in reporting to regulatory agencies (tax returns, corporate data to the Securities and Exchange Commission [SEC], drug test results to the Food and

Drug Administration [FDA]), misrepresentations in applications for bank loans or credit, expense account padding, and the like. Both offenders and victims can be individuals or organizations, businesses, governmental units, or consumers. Fraud may be enacted by organizational insiders, as in expense account padding; by those desirous of becoming insiders, as in fraudulent resumes and applications for employment or educational admission; or by those outside of organizational contexts, as in consumer fraud. Misrepresentations may pertain to the past, present or future. They may reflect transactions based on entitlement to benefits because of status or past experience, based on expectations of future events in an investment context, or based on more contemporary exchanges of goods and services. They may be implemented through oral or written means, or through the use of physical equipment, props, actors, or costumes. Central to these offenses is the fact that without the deception, the illicit transaction presumably would not be consummated.

Self-dealing and corruption. The category of self-dealing is somewhat broader. It reflects the opportunities afforded in organizational positions to expropriate resources. In a society in which most assets are in the physical possession of or readily available to its owners, they can only be expropriated by force or deception. Where custody of property is diverted to non-owners (agents, employees, fiduciaries, physical or technological storage) in our organizational society, and where organizations have the capacity to increase assets (i.e. they are no longer finite or "zero-sum"), expropriation is possible without either force or deception. The central distinguishing feature of these offenses is the location of offenders in fiduciary positions (interpreted broadly)[11] vis à vis organizations or relationships, and the exploitation of these positions for personal enrichment. The prototypical examples of offenses in this category are embezzlement, pilferage, and employee theft. They pertain to the expropriation of commodities that are specifiable and fixed in quantity, whose gain to the fiduciary constitutes a loss to other parties.

However, the exploitation of fiduciary or insider positions may pertain to other than finite commodities. It may involve the borrowing of organizational property for personal use (i.e. use of the corporate plane for private vacations, utilization of corporate employees for maintenance work on one's home, or the unauthorized use of a client's stock as collateral on personal loans). It may involve the exploitation of corporate opportunities to the benefit of insiders without cost to the organization — preferential treatment (in extending bank loans, in punishing deviance, in admissions to educational institutions), directing organizational expenditures or allocations to corporations in which insiders have an interest (investment of union pension funds in establishments in which

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11 In legal terminology, "fiduciary" has very specific connotations. Here it is used more broadly to refer to the need for trust and delegation of responsibility in the creation of insider positions in organizations and relationships. Entrusted roles inhere in various locations in organizational hierarchies — from watchmen and guards to secretaries, managers, corporate officers and directors. Although the fiduciary position is described as an individual role, there is nothing to preclude the classification of groups and organizations as fiduciaries — i.e. boards of directors, law or accounting firms, etc.

trustees hold an interest, selling land or supplies owned by insiders to their organization), directing organizational policymaking to support interests of insiders (creating favorable zoning for properties they hold), and exploiting information for personal advantage (i.e. insider trading in the stock market).

The previous examples pertain to self-dealing or conflicts of interest. Where insiders direct assets and opportunities of this sort to outsiders because of incentives they are offered, the activities are labeled "corruption." Typically, this label has been utilized to apply to fiduciaries vested with public trust — political officials, police officers, etc. — but corruption occurs in situations of private trust as well. The activities of insiders are no different here than in the case of self-dealing -- they still steal, borrow, and manipulate organizational opportunities and allocations. The difference is that in the case of corruption, the economic incentives to insiders derive, not from the value of the organizational opportunities and resources, but rather from the payments of outsiders for directing organizational resources to them. Payments may take the form of direct monetary bribes, campaign contributions, kickbacks, gifts, alcohol, sexual favors, entertainment and vacations, promises of employment for insiders or their associates, investment opportunities in outside enterprises, invitations to participate in the illicit activities, or the promise of business to other enterprises in which the insider holds an interest.

The occasions for corrupting insiders and the form of corruption may vary. Outsiders may corrupt insiders for fixed "zero-sum" organizational resources (as in some sophisticated theft arrangement), but most seek "variable-sum" resources — organizational opportunities, information, and the like. Inducements may be paid to insiders to speed up, give priority to, or in some other way facilitate a legitimate transaction that would be completed eventually without the bribe. Inducements of this kind are labeled "speed" or "grease" money or "transaction" bribes (Reisman 1979). In contrast, "variance" bribes (Reisman 1979) request insiders to adjust the performance of their jobs in favor of the interests of outsiders. Peformance may pertain to the allocation of commodities (referring broadly to the dispensation or acquisition of goods, services, or entitlements), to the creation of new opportunities (changing legislation, creation of government programs), or to the obstruction of social control (fixing tickets, buying judges, tampering with juries, buying off police, etc.). In the latter case, bribery may be preventive — social control personnel may be regularly provided with gratuities to forestall any future sanctions — or reactive — inducements are provided to fix a particular case. In all corruption contexts, bribery may be permanent or episodic. The "outright purchase bribe" (Reisman 1979) "buys" the insider, and aligns his or her loyalties with outsiders rather than insiders for the first and all subsequent transactions. Other variance bribes may involve a single transaction.

Corruption activities multiply the offender pool from the single person, group, or organization engaging in self-dealing to the collusion of two or more such entities, and generally expand the social locations from which offenders operate. The activities of outsiders who participate in corruption are different from those of insiders, but they constitute law violations and are subject to prosecution as well.

Therefore, although they share common elements, self-dealing and corruption are rather different events. Furthermore, it is likely that insiders who participate in self-dealing are different from those engaged in corruption with regard to motivation and organizational position. One might expect substantial differences, for example, in the motivations of the embezzler and corrupt legislator for engaging in illegality. One might also expect that the organizational positions of participants in the two kinds of offense would differ. Insiders participating in corruption most likely would occupy "boundary spanning" or "output" roles, which link organization and environment (Thompson 1962). They most likely have allocative, discretionary, or policymaking roles. On the average, they may occupy somewhat lower positions in organizational hierarchies than their counterparts who engage in self-dealing. In any event, it is necessary to distinguish between insiders engaged in self-dealing and those involved in corruption. But the fact that they are both instances of the more general phenomenon of insider self-dealing should not be ignored.

Regulatory offenses. Other offenses that frequently appear in the white collar crime literature are rather different from those considered in the categories of fraud and self-dealing. The fact of exploitation, either through deception, insider position, or the purchase of insider positions, inherent in fraud, self-dealing, and corruption, respectively, is not applicable to these offenses. These tend to be regulatory offenses — the violation of administrative regulations, typically by evasion, that pertain to the conduct of business, the use of public facilities, or the obligations of citizenship. Such rules pertain to the payment of taxes; licensing and registration of organizations, professionals, equipment, securities issuances, and the responsibilities of registrants; the conditions of employment (concerning hours, wages, safety, and discrimination); the relationshp between organizations and their environment with regard to pollution, radiation, etc.; the relationship between organizations themselves with regard to antitrust, bid-rigging, referral schemes; and the like.

Regulatory offenses do not involve expropriation. They may increase the economic resources of the violator since the cost of continuing regular conduct is typically lower by virtue of the evasion of regulatory requirements. But the norms from which these activities deviate are rather different from those discharged by misrepresentations and self-dealing. Absent their common quality of pertaining to phenomena other than expropriation, however, these norms and the behaviors to which they apply are diverse and bear no necessary relationship to each other.

These offenses share a common label by default, not by theoretical design. For those who seek to examine offenses of this kind, greater discrimination between kinds of violative behavior is necessary. This paper does not provide those criteria.[12] One point must be emphasized,

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12 One attempt that might be useful differentiates forms of organizational deviance (many of which would constitute regulatory violations in our usage) in terms of the social categories of its victims (Ermann and Lundman 1978b). Victim categories include organizational (1) participants, (2) owners, (3) its public-in-contact, and (4) the public-at-large. The corresponding types of deviance are (1) "breakdown

however. Although they are not specified, these criteria pertain to norms, not to the source of the laws or location of the corresponding enforcement responsibility. This category is not coterminous with Internal Revenue Service (IRS), Environmental Protection Agency (EPA), OSHA, FDA, SEC, etc. violations. For the prescriptions of regulatory bodies provide opportunities for fraud and self-dealing as well. One can file a fraudulent income tax return and generate considerable income. One can file a fraudulent registration statement with the SEC which can result in the successful distribution of stocks by virtue of the credibility the registration generated. Licensing or registration with regulatory agencies can provide the badge of legitimacy that contributes to the success of otherwise uncredible or disreputable organizations. They provide resources for con games; they allow the creation of fiduciary relationships which can be utilized for embezzlement. Furthermore, they generate new systems of public and private social control and inspection which provide new opportunities for corruption.

For these reasons, one finds that illegal schemes based on fraud and self-dealing also involve separate regulatory violations. But one must differentiate these offenses -- the legitimate corporation which fails to register with the SEC and the considerably less legitimate one which employs a highly misleading prospectus to market its securities; the factory that fails to abide by EPA standards in its emissions and the factory that fraudulently claims compliance with EPA standards and additionally files for tax breaks for the installation of nonexistent antipollution devices. The former examples reflect regulatory violations exclusively, the latter couple regulatory violations with fraud.

Additional Distinctions. The categories suggested here begin to highlight some of the distinctive features of "white collar" crime offenses based upon normative criteria and characteristics of the illegal behavior. However, these three categories -- fraud, self-dealing/corruption, regulatory offenses -- are extremely large, encompassing very disparate forms of behavior. The additional criteria selected to discriminate events in these categories should reflect the theoretical or policy interests of the user. To make these selections in the abstract would generate a typology of little value to the user who would find some categories much too refined and others far too inclusive. This section, therefore, suggests classes of standards that may be useful for some typological efforts. These classes consider the nature of the offender, the commodity subject to abuse, the offending behavior, and victimization.

A variety of distinctions pertaining to the nature of the offender may be important to the user. They consider the number of offenders, whether they are individuals, organizations, or both. Where individuals are involved, their social or organizational role -- custodial, managerial, allocative, policymaking, fiduciary, social control, beneficiary -- may be

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of internal due process," (2) "Loss of financial viability," (3) "betrayal of vulnerable actors," and (4) "erosion of external control, or socially disfunctional output," respectively (p. 61). Following from this rather general and absract typology, one might further specify the kinds of behaviors that pertain to the different categories.

distinguished as well as their bureaucratic or hierarchical position if their association with organizations is relevant to the illegality. Where offenders are organizations, distinctions about the type of organization -- whether government, business, service, non-profit, mutual benefit, etc. -- may be useful. For both individuals and organizations, some of the standard sociological variables may be useful distinguishing features -- social class, age, sex, race, education, and recidivism for the former; and age, size, organizational structure, financial condition, market characteristics, recidivism, etc. for the latter.

Perhaps more valuable than information about the social type of offending organization is some sense for the organizational context in which violation occurs, that aspect of organizational behavior subject to abuse. By focusing on the organizational function involved with resource acquisition, for example, one could construct a category that would include the scandal in the General Services Administration as well as the bribes and kickbacks paid to restauranteurs by liquor companies. Centering on entitlement demands on organizations might generate a category that includes welfare, tax, insurance, and expense account fraud. Instead of concentrating on the type of organization itself, then, one might consider the kinds of transactions engaged in by various types of organzations.

A related concern suggests differences based upon the commodity transacted for: Is it money, material goods, services, bonds or securities, interest or dividends, information, assurances of future property or services, or government authorization or licensing? Is the commodity "zero-sum" or "variable-sum"? Does it reflect a past, present, or future event?

Distinctions based upon the nature of the offense consider the methods of deception or technology used in the violation -- do they involve forgery, accounting irregularities, computer manipulations, social performances, or mass media advertising? Are representations "embodied" or "disembodied"; do they include face-to-face communication between victim and offender? How many offenders are involved and how are they organized in the execution of illegality? Are offenses discrete in time, one-shot violative episodes, or continuing over time? Do offenses include activities related to concealment and cover-up?

Finally, does the offense involve specifiable victims? How many are there; how are they distributed over physical space? Did victims know each other prior to victimization? Was there a prior relationship between victim and offender? What is their present relationship -- is the offender a stranger? fiduciary? employee? beneficiary?[13] Are victims aware that they have been victimized?

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[13] Offenses by organizations have been separated in terms of the social categories of their victims, whether organizational participants, owners, its public-in-contact, or the public-at-large (Ermann and Lundman, 1978b, p. 61).

The Issue of Criminality

A final theme in the conceptual history of white collar crime concerns the continuing controversy over the criminal status of white collar offenses. It has been disputed because:

- the detection and prosecution of white collar offenders are rarely centered within traditional criminal justice agencies, but more commonly are dealt with in administrative agencies (Caldwell 1958, Tappan 1947, Newman 1958, Kadish 1963, Kwan 1971, Clinard and Quinney 1973, Mannheim 1965);

- of the infrequent imposition of criminal sanctions (Newman 1958, Kadish 1963, Clinard and Quinney 1973);

- of the inability to prove intent or the irrelevance of intent (Newman 1958, Kwan 1971, Clinard and Quinney 1973);

- of the absence of public moral outrage or judgement of the acts as morally reprehensible (Burgess 1950, Newman 1958, Kadish 1963);

- white collar offenders neither think of themselves nor are commonly thought of as criminals (Newman 1958, Burgess 1950, Mannheim 1963);

- of the incongruity of society's respectable members being its criminals (Vold 1958);

- white collar crimes tend to be crimes created by legislative bodies (mala prohibita), rather than natural crimes (mala in se) (Newman 1958, Gibbons 1973, Bloch and Geis 1962, Kwan 1971, Geis and Edelhertz 1973); and

- white collar offenses involve acts which have been outlawed "overnight," and are indeed not easily distinguishable from acceptable business practice (Burgess 1950, Kadish 1963, Ball and Friedman 1965).

The controversy has centered around conflicting definitions and interpretations of the meaning of the term "crime," and an occasional attempt, as Aubert observed, "to interpret the question of whether white collar crimes are crimes or not as a research problem and give an affirmative answer as if it were a significant result of his studies" (1952, p. 264).

Sutherland was insistent in his assertion that white collar crime was indeed crime. For him, it was necessary to equate white collar offenses with more traditional categories of crime to argue successfully for the inadequacy of current explanations of crime which relied on the poverty and social pathology of the offender and for the utility of his theory of differential association. For these less polemical purposes, white collar offenses need not be crimes as a definitional assertion. Indeed, such an assertion weights the concept with an assortment of unnecessary baggage, and limits the breadth of the subsequent enterprise.

Assume that the criteria of crime implicit in the objections enumerated above were incorporated by definition so that it were possible to isolate a set of offenses embraced by Sutherland's (or some other) definition which were "purely criminal" -- fraud, embezzlement, and bribery, perhaps. To do so, would define away one of the richest and most interesting of the theoretical questions posed by white collar offenses. The designation of an act as criminal is much more than a definitional activity; it is a social and normative enterprise. It highlights the process of social valuation and social stigma, the allocation of legal resources to one normative breach rather than another, and the "political" interplay of social interest groups and power constellations.[14] It also reflects, especially in the white collar area, the history of the regulatory process, and the fortuitous and rather idiosyncratic development of administrative agencies charged with adjudication of a large variety of offenses. The theoretical richness of the uncertainty of the criminal sanction has been stated quite aptly by Aubert:

> For purposes of theoretical analysis, it is of prime importance to develop and apply concepts which preserve and emphasize the ambiguous nature of the 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. One main benefit to be derived from the study of white-collar crimes springs from the opportunity which the ambivalence in the citizen, in the businessman, and among lawyers, judges and even criminologists offers as a barometer of structural conflicts and change potential in the larger social system of which they and the white-collar crimes are parts (1952, p. 266).

It is the position of this paper that the definitional dispute over the criminal designation of white collar offenses is trivial and arbitrary. This is not to suggest that the criticism of Sutherland is not legitimate; it is simply misplaced and sterile as currently directed. Rather, the controversy suggests quite interesting and significant concerns for social theory, social policy, and social philosophy, some of which are discussed later.

I suggest the adoption of the alternative label "white collar offenses" or "illegalities"[15] — activities which violate the proscriptions or

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[14] See Ball and Friedman (1965) for an excellent discussion of the conditions for "criminalization" in American legal history.

[15] This notion is not without precedent. Edelhertz (1970, p. 3) similarly employed the term "illegal" to avoid the question of "whether particular activities should be the subject of criminal prescriptions." Spencer (1975, p. 238) considered white collar crime to include "paracriminal" as well as criminal behavior.

fail to observe the prescriptions of law.[16] White collar "crime" categorically reflects that subset of offenses which carry criminal sanctions and means of enforcement; specific "white collar crimes" reflect those instances of violative behavior within these subsets for which criminal enforcement remedies are actually applied. The criminal designation of law, its enactment, its sanctions, etc. are considered problematic rather than definitionally fixed in this view. For purposes of research, one might wish to focus only on offenses which carry criminal penalties and are prosecuted by traditional criminal justice agencies. But for purposes of theoretical development, the occasional use of the criminal enforcement model must be recognized. This can be done only where the category of offenses under inquiry include more than the violations for which this model was imposed.

16 Indeed, one might prefer even more general conceptual constraints, stipulating white collar offenses as normative violations and allowing the invocation of the law as a mechanism of social control to remain problematic.

II. A RESEARCH AGENDA ON WHITE COLLAR ILLEGALITY AND ITS CONTROL

The complex of social organizations and social relationships encapsulated by the phenomenon of white collar crime is truly a microcosm of the larger social world in which it is embedded. A number of rich and fascinating questions can be posed about aspects of this miniature social world, derived from all of the social science and normative disciplines. Certainly some of these questions are more relevant than others, and some better exploit the distinctive features of white collar crimes as a focus for the refinement and enrichment of one's understanding of the larger social world.

The following discussion suggests some of the questions implicit in a deviance and social control perspective. It directs attention first to white collar illegality itself, examining the forms and patterns of violations, their social "location," and the social characteristics of offenders. Topics central to a social control perspective, concerning societal values and the development of norms pertaining to white collar offenses, the enforcement of these norms, and the disposition and sanctioning of illegal behavior, are also explored. For each of these topics, the need for description as well as explanation is considered.

The Nature, Organization, and Social Location of White Collar Illegality

This general group of topics pertains to variability in the social structure and social location of white collar crime. It considers the types and form of white collar illegality and seeks to account for the distribution of variable forms across time and space.

The Form and Social Organization of White Collar Illegality

The study of crime and deviant behavior has been negligent, particularly in recent years, in its lack of attention to the form and social organization of criminal activity. We know a great deal about criminals and about the official response to them, but very little about the activity itself (Wheeler 1976). This is generally true of the study of white collar crime as well. A number of journalistically-oriented ethnographies of particular white collar crimes or scandals are available (see, for example, Smith 1961, Herling 1962, Miller 1964, Barmash 1972, Kwitny 1973, Dirks and Gross 1974, Hutchison 1974, Farr 1975, McClintick 1977, Shaplen 1978). The concern for prevention of corporate victimization from white collar crime and for beefing up the detection and prosecution of these crimes has resulted in the development of descriptive policy manuals directed to the structure and tell-tale signs of white collar crime (see, for example, Chamber of Commerce of the United States 1974, Edelhertz 1977, National District Attorneys Association 1975). But between the excessive generality and superficiality of the descriptive manuals and the fine detail of the ethnographies of notorious crimes is a deep chasm that needs to be filled.

The richness of detail regarding the developmental sequence of the offense, the characteristics and social organization of offenders and victims, the means of executing the illegality, the components of associated

cover-up activities, the impact and magnitude of the offense, etc. available from these ethnographies is tantalizing. But these characterizations must be examined with the caveat that the ethnographies by and large reflect notorious, precedent setting offenses -- Equity Fundings, Salad Oil Swindles, General Electric price-fixing conspiracies, Lockheed scandals -- rather than more typical offenses. Because of the unusual sample that these examples reflect, it is impossible to use them either to characterize the offenses they illustrate or for comparative analyses between offenses.

There is a need for research, then, that generates detailed characterizations of a variety of different white collar offenses. These descriptions would reflect a more representative sample of offenses than characterize most of the studies available at the present time. Furthermore, the research would be comparative by design. Data pertaining to the same set of variables would be collected for each offense. It would then be possible to get some sense of the typical characteristics as well as the range of characteristics for particular kinds of offenses and to contrast different offenses on the basis of these characteristics. It would be useful to have data by offense pertaining to questions such as:

- what kinds of illegality were involved?
- when did the offense begin, and where was it located?
- what was the duration of the offense?
- how many offenders were there?
- what are the characteristics and social position of the offenders?
- are there enumerable victims, and how many?
- what are the characteristics of the victims?
- how were victims recruited? was there victim-precipitation?
- were the victims aware of their victimization?
- what were the methods of the offense?
- was there a cover-up, and if so, what did it entail?
- what is an estimate of the amount of money involved in the violation or some other indicator of harm or impact?
- were there other violations associated with the offense -- i.e. tax fraud, mail fraud, regulatory violations, etc.?

This proposal ignores two critical issues. First, a problem evaded in the first part of this paper returns to haunt us: How are white collar offenses to be defined and differentiated? Without an answer to this question, it is impossible to develop a research design. However, any reasonably reflective arbitrary decision is adequate, as long as rules of differentiation are relatively precise and consistent. Second, given the secretive nature of white collar illegalities, the fact that their occurrence is often successfully concealed from victims, social control agencies, and hence, researchers, how does one construct a sample of offenses? If the population of offenses is inherently unknowable, what biases are introduced by particular sampling designs? As in the study of street crime, for example, it may be necessary to utilize samples based on offenses known to social control agencies or based on victimization surveys (which in the white collar area do not yet exist). Either stategy has significant methodological problems which must be addressed, if not surmounted.

Although the data collection described here should be utilized for theoretical questions about the causes and correlates of white collar crime, they are useful as well in the examination of the social organization of white collar offenses. How do offenses vary in their extent of harm or impact, as shown in the number of victims and extent of monetary harm? Do offenses vary in duration or in the physical or social distance they encompass? Do they differ in the number of offenders and abettors participating in the violation? How do offender characteristics -- class, age, race, education, professional experience, social position, recidivism -- vary by offense? Do offenses differ in characteristics of victims -- in social class, economic sophistication, prior victimization, in victim-precipitation, and in their awareness of having been victimized? Do different methods of offense -- mass media advertising, oral representations, professional communications, prospectuses and formal disclosures -- attract different kinds of victims? What is the relationship between offense and cover-up? Are cover-ups more likely for some violations than others, and do particular kinds of offenses have distinctive cover-up styles and strategies?

How about the relationship between offenses? Do different offenses typically occur simultaneously by the same cast of characters because of the requirements of facilitating a particular scheme? Do different offenses occur sequentially, either because of the offenses implicit in attempts to cover-up prior violation, because certain kinds of "professional" white collar offenders typically move from one type of offense to another, or because certain violations create new opportunities for abuse (i.e. payment of bribes or the creation of slush funds that become easy targets for embezzlement)? What kinds of offenses rarely occur together?

The Social Location of White Collar Illegality

Perhaps the most interesting research in this area concerns the social location or pattern of particular kinds of white collar offense. It questions the location of offenses over time and physical space, and within particular sets of offenders, victims, and kinds of transactions. One might examine, for example, when price-fixing conspiracies are most likely to occur; where they are most likely to occur; in what kinds of industries or organizational environments they are most likely to be found; and what type of individuals or persons in which occupational roles are most likely to participate. The same kinds of questions could be posed for any number of offenses -- securities fraud, tax fraud, bribery of public officials, etc. Some questions might be more interesting than others for particular kinds of offenses. Regional variation may be significant for political corruption, but less so for tax fraud. Rates of price-fixing may vary considerably over time and by industry, but rates of securities fraud may not. Personal characteristics may be significant predictors of embezzlement or participation in a confidence swindle, but may be of no consequence in predicting individual participation in price-fixing or in the payment of bribes. These differences derive, of course, from the fact that the causes and correlates of white collar crime vary by type of offense.

The theoretical issues implicit in interest in social location are almost entirely unexplored in the literature. With regard to chronological questions, there have been a few superficial global attempts at developing a

historical perspective on white collar crime. For example, Edelhertz has suggested that the modernization of the social and economic environment — the weakening of marketing safeguards, the development of a "faceless transactional environment," the more frequent economic exchanges between strangers, the expansion of business organizations, the growing reliance on fiduciaries, the rapid development of new technologies, new developments in marketing, distribution, and investment -- has resulted in an increased rate of white collar crime and has fostered new forms of illegality (1970, pp. 5-8).

Former Deputy Attorney General Harold Tyler has noted that there is a definite correlation between the "state of the economy" and types of white collar crime. He suggests that during recessionary economic periods, highly speculative investment schemes and mortgage commitment rackets proliferate (1975, pp. 15-16). However, more specific research, for example, on cycles of white collar crime, its relationship to economic, political, or social change of specific kinds can not be found.

Concern for the physical, geographical or cultural patterns of white collar crime is evidenced by a wealth of cross-national and cross-jurisdictional research, particularly with regard to political corruption (see Heidenheimer 1970, for example). But the comparative richness of this research unfortunately has been underplayed. Explanations for the spatial distribution of white collar illegalities are incredibly naive -- based on assumptions of the ubiquity of particular events, stereotypes about regional culture or political machinery, or the geographic distribution of commodities subject to abuse (i.e. land frauds in the south or mining frauds in the northwest and southwest). Comparative research is potentially so rich, especially where the effects of political ideology (socialist versus capitalist), political organization, economic development, urbanization, the distribution of industries, the nature of the interorganizational environment (competition and monopoly), or substantive legal and regulatory differences can be systematically examined. Research that is not only comparative in outcome, but also comparative in theoretical design should be initiated.

The literature that has focused on individual and organizational characteristics in patterns of white collar illegality has invoked "motivational" explanations for white collar criminal behavior almost exclusively. Where offenders are individuals, social status, mobility, family background, rationalization (Levens 1964, Spencer 1965, Bromberg 1965), nonshareable problems (Cressey 1953), business as opposed to professional orientations (Quinney 1963), differential treatment under the law and perceptions of fairness (Ball 1960), differential association and varying exposure to norms, values, and criminal techniques (Sutherland 1949a, Clinard 1952) purportedly are related to participation in various white collar offenses. Very little research has been conducted on the social psychology of victims and their motivations for participating in activities that eventuate in white collar illegality. The "motivational" explanations applied to organizations tend to have implicit concern for the economic fortune and constraints upon business organizations — the "munificence" or "scarcity" of environments (Staw and Szwajakowski 1975), elasticity of demand (Leonard and Weber 1970), shortages or concentration of

supply (Leonard and Weber 1970, Katona 1945), and the demands and costs of compliance with regulatory procedures (New York, Knapp Commission 1973).

Most of these explanations pertain to particular kinds of offense (embezzlement, antitrust, bribery) or are based on very limited research populations (prisoners, notorious persons, corporations on which civil penalties were imposed). Therefore, they are limited and require cautious interpretation. Further work concerned with motivational issues for persons and organizations that participate in white collar offenses must be concerned with designing research based upon more representative samples of offenders and non-offenders and with a concern for comparative explanations across offenses.

Despite these difficulties, analyses that utilize implicit motivational theories to explain the variety of locations of white collar crime and white collar offenders are relatively common. It is clearly possible, though, to bracket motivational predispositions for analytical purposes: assume they are constant or fixed according to some formula. Given the fact that perhaps all or some proportion of persons and organizations would participate in white collar illegality, they do so at different rates because of differences in opportunity. The possibility of tax evasion or tax fraud is reduced in a system in which most sources of income are subject to withholding procedures. Systems of no-fault insurance generate different probabilities of insurance fraud than traditional insurance systems. The opportunities for embezzlement, self-dealing, and corruption are different for persons who work within organizations in highly visible, highly supervised locations than for those who work alone on organizational boundaries -- contrast, for example, bank tellers at their windows and police officers walking their beats (Sherman 1976, p. 19). In short, the structure of organization, interorganizational relations, transactional systems, and the like facilitate or inhibit the opportunities for white collar crime. Research concerned with the exploration of these differences -- of the impact of organizational design or the organization of economic transactions on rates of violation and on the execution and manifestation of illegality — is needed.

A proposal for research in this area unfortunately suffers from the absence of a typology of white collar illegalities that differentiates offenses on the basis of the structure of their execution. Such distinctions would be useful, since opportunities for abuse reflect the organization of behavior subject to abuse. This kind of research is illustrated with examples of a few structurally distinct white collar offenses: collusion, bribery, embezzlement, and fraudulent abuse of beneficiary systems.

One may question how characteristics of the organization and the relationship of potential colluders facilitate their awareness of a mutually beneficial arrangement and their opportunities to communicate (for example, in price-fixing, bid-rigging, or referral schemes). In the context of antitrust, Hay and Kelley (1974) suggest that coordination is easier, and hence collusion more likely, where the number of firms is small, their concentration high, and the product in question homogeneous. They also indicate that industry structure is related to the type of collusion involved. Where there are a large number of competitors and where the

product differs among transactions, collusion is conducted during regularly scheduled formal meetings; where there are a small number of firms and a simple product, less formal communication is possible; where purchases are non-competitive, job or territorial allocation may be necessary or a complementary bidding system instituted (see also Leonard and Weber 1970, Reckless 1973).

Consideration of patterns of bribery pertains to two phenomena: (1) the nature of the relationships between organizations that enhances the likelihood of inducements from one to the other and predicts the character of these inducements; and (2) the nature of the organizational structure that facilitates the acceptance of bribes. How does the organization of a market for the supply of goods and services facilitate bribery arrangements? In the context of government contracting, Rose-Ackerman (1975) suggests, for example, that when the government purchases a product sold on the open market, there are fewer incentives for bribery than when the government is the sole purchaser. Her analysis also considers the effect of monopoly or competition in the supply of products and product differentiation on the likelihood of bribery. Other questions about opportunities for bribery might be explored. Does the form of bribe payments vary when organizational relationships are potentially on-going (supplying goods to a retailer or routine constant government inspection of producers) and when they are single events (applications to medical school, selling military equipment to a foreign government)? How do the roles in bribe recipient organizations affect the incidence and form of bribery? What is the effect of intraorganizational mobility, for example, the constant shifting of individuals in and out of organizational positions? What would be the extent and nature of political corruption if the assignment of legislators to congressional committees were done randomly and altered annually?

A consideration of embezzlement might examine differences in organizations — whether their commodities are relatively liquid like money or consumer goods or less liquid like nuclear submarines or machinery — in the storage of such commodities and accounting or inventory procedures for them, in the nature of supervisory systems, in the degree of discretion vested in employees and in employee mobility and turn-over and their relationship to the rate and nature of embezzlement.

The last example pertains to attempts by persons or organizations to fraudulently claim entitlement to various benefits — bank loans, insurance claims, food stamps, welfare, medicare, scholarships, or expense account reimbursements. Many of these entitlement arrangements vary in the method by which entitlement is demonstrated and in the form of compensation. Are vendors paid (as in medicare) or are beneficiaries reimbursed (as in auto insurance)? Do potential recipients simply disclose their need for benefits, or are third parties required to certify need? Variation in the role of third parties, the demonstration of entitlement, the significance of audits and independent investigation by benefactor organizations are considerable, and most likely are related to the rate and form of abuse that result.

In short, how does one structure an organizaion, allocate organizational positions, protect organizational resources, structure interorganizational relations, and create unilateral or bilateral

transactional systems to minimize abuse? What effects do different solutions of structure and design have on the forms that such abuses will take? Research that considers variability, then, in the nature, supply, and demand for goods and services, the relationship between organizations, the structure of organizations and the mobility of persons through organizational roles, the nature of supervision, the structure of transactions, and the like, and their relationship to the form and incidence of violations should provide important insights regarding the social location of white collar crime.

The Normative Dimension of White Collar Illegality

Research questions concerning the development and change as well as the correlates of attitudes, social values, and social and legal norms with regard to white collar crime are considered in this section. Although some research on the attitudinal dimension can be found, much of the literature on the emergence of legal norms in the white collar area remain speculative. Data collection and analysis for both of these topics are described in this section. It concludes with a discussion of the policy implications of research on normative issues.

Attitudes and Values Concerning White Collar Crime

A common charge is made that laws prohibiting white collar offenses are not in correspondence with the mores of the time, and attributes the apparent leniency with which white collar criminals are treated to this discrepancy (Burgess 1950, Aubert 1952, Newman 1958, Kadish 1963). This accusation is made by the offenders as well as by social scientists. Recent clamor following in the wake of the international bribery investigations conducted by the SEC (Miller 1979b, Taubman 1979a, 1979b) and the scandal surrounding the banking activities of Bert Lance (Horvitz 1977, Miller 1979a) reflect assertions by members of the business community that enforcement policy is not attuned to "normal business practicies." There is little systematic research, however, that attempts to assess the "mores," or the divergent social attitudes concerning activities of this kind. Studies have explored student reaction to the television quiz show scandals of the late 1950s (Lang and Lang 1961) and public judgements and sanctioning preferences about pure food violations (Newman 1953). In the wake of Watergate, a flood of survey research projects of varying quality has emerged, tapping a variety of attitudes concerning public confidence in the country's leaders, and preferences about the punishment of public officials engaged in illegality (for example, Caroll 1974).

A first priority, then, is the development of good survey research which generates descriptive data on public attitudes concerning white collar crime. It is critical that research separate the dimensions of white collar crime that often are confused in attitude surveys — attitudes about different forms of offense (embezzlement, price-fixing, stock manipulation, environmental pollution, as well as traditional crimes); about different patterns of victimization (victimizing naive investors, large corporations, faceless consumers); about different characteristics of offenders (national politicians, civil servants, corporate officers, low-level employees); and about various sanctioning alternatives (imprisonment, fines, injunctions, alternative sentences). It goes without saying that research should be

redirected from college sophomores to wide-ranging populations, and should include cross-national and longitudinal research.

These data would be valuable for descriptive purposes as well as for the exploration of variability in attitude by type of offense, by personal and social characteristics, and over time. Clearly public attitudes vary by offense. Just as there is a wide range of attitudes about traditional forms of crime, the same is true for forms of white collar crime. It would be useful to consider differences in perceptions of the seriousness of particular offenses both within some broad category of white collar crime and between particular white collar and traditional crimes.[17]

One might expect considerable diversity in attitudes between different populations. What are the correlates of divergent attitudes? How do they vary by standard sociological variables -- age, socioeconomic status, sex, education, political ideology, ethnicity? Do they vary by social position or occupational role -- distinguishing, for example, business persons, attorneys, accountants, civil servants, employees, or the unemployed? Do victims and non-victims of white collar crime differ in their attitudes toward particular kinds of offenses? What is the nature of cross-cultural variability in attitudes about various white collar and traditional crimes? How can these differences be accounted for?

Finally, research may consider normative change. At the individual level, one might question social experiences as related to attitude change, for example, social mobility or changes in employment. At the social level, the contribution of the mass media, scandal, rates and patterns of illegality, moral entrepreneurship, etc. to change would be considered. How is the law employed to engineer normative change -- for example, the effect of the criminalization and rigorous prosecution of a particular kind of behavior on individual attitudes (Kadish 1963)? In general, then, there is much unexplored territory to be examined regarding individual attitudes and values about white collar illegality, normative differentiation among individuals and social groups, and normative change.

Legal Development

Of primary concern to research on the social control of white collar crime is the evolution of laws regarding particular forms of offense and stipulating appropriate sanctions for their breach. Polemical debates described earlier in the discussion of criminality often contain charges that, unlike "street crimes," many white collar offenses are "mala prohibita" rather than "mala in se," that they are offenses made by positive laws rather than being wrongs in themselves. To the extent that these charges are true, the study of rule-making in the white collar area should be much richer than in that of street crime. The development of legislation in this context is not necessarily an outgrowth of the moral wrong inherent

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17 Some research in progress, conducted by Marvin Wolfgang, is exploring this question. Preliminary findings suggest that particular kinds of white collar illegality typically are rated as quite serious by social audiences relative to their assessment of the seriousness of some "street crimes."

in these activities, but rather it may reflect social, political, or economic design.

An important, although perhaps unwieldy, research agenda in this area is the development of a descriptive inventory of white collar legislation with concern for the behavior proscribed, the prosecutorial avenue available (whether civil, criminal, or administrative), the penalties attached, and the "social jurisdiction" or organizational bodies which are responsible for enforcement. This inventory should encompass a longitudinal scope and reflect jurisdictional differences -- by region, city, state, and nation. Finally, the inventory must reflect concern not only for the origin and creation of legislation, but for its implementation and pattern of use. It is as relevant sociologically that a law is not enforced or is enforced with unusual vigor as that it exists. Furthermore, concern for patterns of use may signal occasions in which existing legislation is being used innovatively, instances in which the creation of new legislation may otherwise be appropriate. This may be illustrated by the imposition of traditional antifraud and disclosure related securities regulations by the SEC in response to allegations of international bribery and questionable payments prior to passage of the Foreign Corrupt Practices Act. In short, rates and patterns of use and non-use of existing legislation may provide important explanations of the development of new white collar legislation.

A useful ancillary agenda item would be the development of an ethnography of rule-making -- a detailed description of the process of formalizing legal proscriptions, with concern for the initiator of the proposed legislation, the nature of the parties involved both in support of and opposition to the proposal, and the nature of the legislative process. The work of Mayhew (1968) in the context of development of anti-discrimination legislation in Massachusetts might serve as a model of the kind of inquiry envisioned.

Data of the sort described here can be utilized to address questions about the conditions under which and the process by which white collar legislation is adopted. The comparative focus can be longitudinal, cross-sectional, or a combination of the two. Questions about the emergence and development of legal norms or about differences by social jurisdiction in the nature, breadth, and severity of these norms can be considered. Research to date has focused explanations primarily on grandiose changes in the social and economic fabric of society or on elements of political conflict and change.

Based upon the analysis of Mannheim (1946, pp. 86-7), Gilbert Geis (1968, p. 10) has suggested that the underlying factors encouraging state interference with commerce include:

- movement from an agricultural to a commercial and industrial society;
- increasing inequality in the distribution of property, and the amassing of great wealth by the few;
- the growing need to leave property in the hands of other persons;
- transformation of ownership of visible property into intangible powers and rights, such as corporate

shares, including a system of social security in place of ownership of goods; and
- passage of property from private to corporate ownership.

Elsewhere Geis suggested that the incorporation of principles of "let the seller beware" (caveat vender) into statutory law was a function of "population growth, the development of cities, greater life expectancy, and enhanced technology, the last rich in its potential and awesome in its threat" (1968, p. 7). Clearly we need research on more microlevel social and economic events and their relation to the development of white collar legislation. What is the contribution of recession or inflation or characteristics of the market structure of industries subject to regulation to legislative development?

Vilhelm Aubert, in his study of the development of white collar legislation in Norway, considered the role of changes in Norwegian social structure, characterized by the competition of two social hierarchies -- the ascendant hierarchy composed of the labor movement and the government agencies which it controls, and the descendant hierarchy composed of business groups. His analysis suggested that ". . . the definition of new legal crimes of the white-collar brand has served an important social function by giving the ascendant group a feeling of possessing the economic power corresponding to its political supremacy" (1952, p. 269). However, slowness and inefficiency in the enforcement of this legislation, he argued, has served the function of pacifying the businessmen.

Aubert's observations suggest a more general phenomenon that seems common in political history -- the strategic use of legal norms against corruption and self-dealing by newly emerging political regimes against their predecessors as a means of solidifying their power base (for example, the cases of Indira Gandhi in India or Zulfikar Ali Bhutto in Pakistan). In research on corruption in the Sudan, El Fadil Nayill Hassan (1979) explored the emergence of new anticorruption legislation (as well as more vigorous prosecutions) in the wake of political change. Of course, it is an empirical question whether this seeming pattern is a universal one, and if it is not, the conditions associated with the presence of this pattern are an appropriate subject for research.

The often political and manipulative nature of the creation of white collar crime legislation is illustrated too by research on the role in this process of the pool of actors whose behavior is being limited by such legislation. Research has shown, for example, that historically the development of licensing requirements (and other forms of occupational and professional legislation) has been a response to the demands of occupational groups, guilds, and professional associations, which desire to restrict entrance into their profession or protect them from the encroachment of other professional groups (Akers 1968, Clinard and Quinney 1973). Similar arguments have been offered regarding the regulation of other aspects of economic livelihood; and the involvement of corporations in the construction of the antitrust laws has been frequently documented.

Sanford Kadish (1963) has argued that the identification of business opposition to or determination of white collar regulatory legislation as all-powerful or monolithic is simplistic and empirically inaccurate. Systematic research is needed to examine the conditions under which

political and economic power constellations are instrumental in the creation of white collar legislation, and to examine the kind of norms and the provisions for enforcement and sanctions to which these groups contributed.

Of course, there are other kinds of independent variables related to patterns of legal development that are worthy of exploration. What, for example, is the impact of the nature, rate, and social location of deviant behavior on subsequent legislation? Do waves of violation precede waves of legislation? What patterns and distribution of corruption, for example, are most likely to produce legislative reform? Does the prestige, power, and hierarchical position of persons and organizations engaged in crime predict the likelihood of such reform? What is the role of scandal on reform, and what patterns of violation are associated with subsequent scandal?[18]

In addition to the need for a movement to new kinds of independent variables in the study of legal development, there is a need as well to move from the grandiose questions and comparative settings most often the subject of extant research to more modest ones. Such questions consider differences by jurisdiction and by norm. Why is it that nation A and nation B, state or city C and state or city D have much more stringent laws for certain kinds of white collar crime -- or overall -- than the other? Why is it that regulatory agency E is much more involved in rule-making and rule implementation than regulatory agency F? Why is it that in a particular jurisdiction, the sanctions attached to crime G are much more severe than those attached to crime H? Explanations of these differences may pertain to rates of violation, the regional distribution of kinds of economic enterprise, other economic differences, differences in organizational prestige, or differences in social and organizational climates, and political ideology.

Many of the questions suggested can be explored empirically only with great difficulty. They require a massive data collection effort and a highly sophisticated sense for historical and comparative explanations. However, if the scope of the research and the grandeur of the theory remain modest, there is certain possibility for valuable research.

Norms and Social Policy

Research of this kind is essential for more than the academic questions it addresses. Research on normative issues in white collar crime has significant policy relevance. Data on public opinion, for example, are valuable for policymakers, both in the definition of appropriate legislation and for the demonstrations of wide-spread public support needed for their actions. But the preferences of the public have impact on law enforcement as well. The public audiences of white collar crime contribute both to the mobilization and disposition of white collar crime. As complainants, audiences often are primarily responsible for the detection of white collar illegality by social control agencies, but where the public is not supportive or not aware of the laws, the likelihood that it will mobilize

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[18] See Sherman (1978) for an analysis of this question in the context of police corruption.

these agencies is reduced.[19] Similarly, where the public contributes to legal disposition by participation in jury deliberations, the agreement between public and legal values is central to the likelihood of conviction. The public is critical, then, to the success of law enforcement. Data on its knowledge of and attitudes toward legal norms therefore are of significance.

The questions addressed in the section on legal development reflect matters relevant for social policy as well. It is only after the factors that predict the likelihood of legal innovation, sources of support and opposition to new legal norms, the severity of sanctions, the social arrangements of enforcement, the extent and vigor of legal implementation, are understood, is it possible to design legislation to combat particular offenses.

The Enforcement of Norms Proscribing White Collar Illegality

The previous section concerned the development of norms proscribing white collar illegality. The following section considers the disposition and sanctioning of normative breaches. This section pertains to the intervening process by which these norms are implemented and offenses are detected and investigated. Both macrolevel phenomena -- the emergence, policy, impact, and cost of enforcement organizations -- and microlevel phenomena -- the consequences of the organization of enforcement for particular violations -- are considered.

Enforcement responsibility for dealing with white collar offenses may be vested in either or both the public or private sector. Public sector enforcement may occur at the local, state, or federal levels, and may be lodged in criminal justice agencies and their affiliates (district attorneys, attorneys general, U.S. Attorneys, economic crime units, offices of special prosecutor, the police, FBI, etc.), or in special regulatory agencies (state corporation commissions, SEC, IRS, etc.). When public agencies, whether executive, legislative, regulatory, or program, are themselves the victims of white collar crime -- through benefits fraud, corruption, or self-dealing -- they also may be involved in enforcement activity. Thus, the Department of Health, Education and Welfare had the office of Inspector General which was concerned, for example, with fraud in HEW benefits programs.

The location of private enforcement efforts are more diverse. They include private social control organizations ("Nader's Raiders" types, media action lines, etc.); the victims of white collar crime (purchasers, investors, insurers, competitors, etc.) who singly or in concert may institute civil actions in response to their victimization; the legal bar, which includes members who scour the economic environment in search of violations in the expectation of collecting legal fees through participation in ensuing litigation; and, finally, the parties subject to the norms themselves who create self-regulatory functions or organizations to monitor and sanction member noncompliance with the norms (Better Business Bureaus, Chambers of Commerce, professional organizations, trade associations, etc.).

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[19] See Black (1973, p. 142) for a more general discussion of this issue.

For purposes both of description and explanation of many of the research questions that follow, it would be useful if an inventory of the forms of enforcement and an ethnography of the range of enforcement activity, similar to the normative inventory described earlier, could be developed. The ethnography would consider the form of the enforcement agency's activity, agency emergence and change, enforcement policy, enforcement strategies, typical agency work-load, agency relationship to its "constituencies" and to other organizations including the courts, and general agency characteristics such as size, age, or type of personnel.

Clearly, the development of all-encompassing descriptions for the whole range of actors in the white collar crime enforcement area would be prohibitive. For example, just in the area of securities fraud enforcement, the actors include countless foreign agencies; the SEC, the Commodities Futures Trading Commission (CFTC), the Department of Labor (enforcement of ERISSA concerning certain pension funds), and the U.S. Department of Justice, at the federal level; at the state and local level, securities commissions, corporations commissions, economic crime units, attorneys general; at the self-regulatory level, stock and commodities options exchanges, the National Association of Securities Dealers, the American Institute of Certified Public Accountants, Better Business Bureaus, etc; as well as the securities bar, publicly-held corporations, stockholders organizations (i.e. the United Church Board for World Ministries), and potential stock purchasers, sellers, and holders.

Nonetheless, it would be extremely useful to be able to map out the enforcement terrain for a selected number of white collar offenses and get some sense for organizational differences and variations in enforcement strategy between different agencies concerned with the same offense, similar agencies concerned with different offenses, and different agencies concerned with different offenses. In the remainder of this section, some of the analyses to which these data could be subjected are suggested. They include analyses of the development of enforcement organizations, the nature of enforcement strategies, the development of enforcement policies, enforcement impact, and enforcement costs.

The Development of Enforcement Organizations

Questions about the emergence and development of enforcement organizations follow directly from the questions about normative development considered in the previous section: The allocation of enforcement functions and the stipulations of enforcement strategy are often contained in white collar legislation. Legislation, then, is one source of enforcement organizations and one explanation of the quality of their activity. But it is but one explanation -- legislation is sometimes not enforced or it is over-enforced; organizations over time change in structure, policy, and activity. Enforcement activities may arise without any enabling legislation, reflecting informal norms, private grievances, or private business activity.

This section is concerned with the broader issues. The following questions suggest some of the research inquiries appropriate in this area:

Under what conditions is enforcement kept private or turned over to public agencies? Where enforcement is vested in the public sector, when is it designated to general purpose criminal justice agencies and when are special purpose regulatory agencies created? What accounts for the expansion and contraction of special purpose agencies — further organizational specialization such as the recent creation of the Commodities Futures Trading Commission or the decision to recombine specialized agencies under a single umbrella? What are the patterns of cross-jurisdictional diffusion of particular kinds of enforcement agencies? What accounts for the enforcement apparatus vested in newly created agencies — the rights, for example, of administrative subpoenas, licensing, disclosure, inspections, sanctioning power, etc.? Under what conditions do self-regulatory agencies emerge? What characteristics of the offense or the typical victim are related to active victim participation in the enforcement of laws involving white collar crime or the role of private attorneys in such enforcement? Under what conditions do other private social control organizations emerge? These and other questions explore the organizational terrain in the enforcement area, and the emergence and decline of organizations, their expansion and contraction, patterns of development and diffusion of organizational forms cross-jurisdictionally, and the competition between organizations in different sectors.

Enforcement Strategy

Perhaps the most significant enforcement activity is the development of systems of intelligence for the detection and investigation of white collar offenses. In the study of the detection of cases of alleged illegality by the police, this process has been labeled "mobilization" (Reiss and Bordua 1967, Reiss 1971, Black 1973). Studies of police mobilization have distinguished the location of the intelligence operation -- whether cases have been detected by the initiative of criminal justice officials (proactive mobilization strategies) or are reported to these officials by outside parties (reactive mobilization strategies). The former are illustrated by on-site patrol, traffic control, and vice work; the latter by citizen and, usually, victim complaints. Research on police mobilization has discovered extremely high rates of reactive mobilization. This, of course, should not be surprising, given the infrequency of criminal behavior, its lack of predictability, the short duration of a victimization, and its location in private settings. Indeed, proactive policing is most productive only for offenses that occur in public places and with some degre of predictability and regularity (i.e. narcotics, traffic, prostitution) (Reiss 1974).

However, important characteristics of the nature of illegal activity differ in the contexts of street and white collar crime. It has been observed that in the latter, many crimes are victimless or the parties are unaware of their victimization. These offenses sometimes involve multiple victims, continue over time, and must of necessity occur in public places. The offenders rarely act alone, but behave in a social network inhabited by coconspirators, unwitting facilitators, and middlemen. In white collar crime enforcement, then, one finds multiple locations, sources, and opportunities for mobilizing cases, whether reactively or proactively, and

this gives rise to a multiplicity of techniques.

The following list suggests some of the more typical strategies of detecting white collar illegalities used by various enforcement organizations:[20]

- Complainants and Informants:
  Instances of potential illegality are frequently disclosed by outsiders. They include victims of the activity, competitors of those engaged in the activity, disgruntled employees, insiders of offender organizations, informants, and others.

- Solicitation of Outsiders:
  This strategy seeks to create another source of complaints of illegalities, although it does so formally. Two types are employed. In one, private organizations are created with responsibility for detecting illegality. Frequently the agencies maintain legal oversight over the activities of these organizations. They include private inspectors (i.e. grain inspectors), private auditors, or self-regulatory organizations (i.e. stock exchanges). A second type attempts to employ the threat of some form of liability for illegality to parties who may have knowledge about the illegality, for example, lawyers, accountants, or brokers with regard to stock frauds. Presumably this group can be employed to report on the activities to which they are privy.

- Other Social Control Agencies and Processes:
  Other social control agencies often learn of illegal activities under their jurisdiction. This is especially true given the "fortuitous and random" fashion in which agency jurisdiction is sometimes defined. The execution of illegalities, therefore, frequently crosses agency jurisdictional boundaries. Outside agencies may refer cases formally or informally. Furthermore, agency observation of external social control activities may signal potential illegalities salient to agency jurisdiction. For example, investigation of illegal campaign contributions by the Watergate Special Prosecutor generated the investigation of corporate slush funds by the SEC. Private stockholder suits may raise the spectre of associated illegality, and generate new investigations.

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20 See Shapiro (1980) for an extended discussion of detection strategies used by the SEC.

- Snowballing or Spin-offs:
This strategy of case acquisition is closely related to the former. In this example, the social control process which generates new investigations is located within the agency. The execution of a particular investigation turns up evidence either of additional violations enacted in the particular illegal scheme or of independent schemes. Since many white collar illegalities encompass many transactions and relationships all mobilized to "pull off" the illegality, investigation of one of these transactions probes the tip of an iceberg, the underlying structrue of which is occasionally discovered. Where white collar violators are members of organized crime, perpetual con men, and the like, the investigation of one of their schemes often supplies evidence of others. Thus, a given investigation sometimes spins off other investigations.

- Inspection and Auditing:
This strategy deploys agency personnel to make independent inquiries about the activities of their regulatory constituents. Through legitimate access to the activities of particular entities, agencies can scrutinize their behavior and presumably uncover illegal activity (as well as prevent illegality because of the difficulty of hiding it from an inspection system). This strategy is exemplified by bank examinations or auditing of tax returns.

- Infiltration/Coversion:
Where agencies lack legitimate access to inspection or where the formal and public quality of inspection facilitates cover-up, more covert strategies may be employed. Although their use is still more typical of the enforcement of street crimes, particularly vice or victimless crimes, infiltration and coversion have special applicability for the detection of more collusive white collar crimes, such as bribery and corruption, or those involving complex frauds perpetrated on unwitting victims.

- Disclosure or Self-Reporting:
This strategy relies on the reporting of data by regulated parties on their activities, behavior, or financial condition — some aspect or pattern of which might be indicative of illegality. This is illustrated by the required filings of publicly listed corporations or of stock purchases by corporate insiders to the SEC. Another interesting device is the requirement that parties audit or investigate themselves as a condition for settlement of other illegalities (as in the foreign payments area). Often where the sanctions or the probability of detection of

inadequate disclosure is high, data on other illegalities can be gathered.

- Surveillance:
This strategy relies primarily on the output of disclosure or observable public transactions or events. It studies the patterning and change of various statuses and activities in the hope that unusual activity may be indicative of illegality. This is best illustrated by market surveillance conducted in the securities area, where complex computer programs scour data on stock market behavior, purchases, sales, prices, etc., and signal unusual activity warranting further investigation. Because the marketing of securites is so well documented -- with names of buyers and sellers, time of transactions, quantities, prices, etc., -- rather ingenious inferential models can be developed and employed for detection of illegality. Note that surveillance can rely on other material, of which the mass media is an important example.

The macrolevel issues implicit in a consideration of enforcement strategy — differences by agency in rates of the utilization of particular intelligence techniques or in the extent of proactivity — are addressed in the following discussion of enforcement policy. In this section, microlevel issues concerning the relationship of the criminal event and law enforcement strategy are considered. First, illegal activities, by necessity and design as well as inadvertence, generate information which is differentially susceptible to detection by the various strategies described here. Different white collar illegalities generate different kinds of data. An important research issue concerns the correlation of offense-related characteristics — the actual offense, the means of violation, the magnitude of the violation, characteristics of the violator, the relationship of the offender to the enforcement agency, and patterns of victimization -- with detection strategies. Are proactive means more likely to detect violations by offenders who previously were known to the agency, through recidivism or registration, than violations by novices? Do some strategies detect more serious violations than others? Offenses that involve no known victims or unwitting victims may be impenetrable without proactive methods. Even when victims are aware of their victimization, the likelihood that a complaint will be lodged with an enforcement agency may be affected by the number of victims, the victim's per capita loss, the social organization of victims, prior experiences of victimization, or general sociological characteristics of victims.

This last example, which considers the correlates of victim complaints, suggests some useful research concerned with the social conditions under which agency outsiders transmit intelligence to social control agencies. How do offenders construct their schemes to minimize victim complaints? How do they plan their crimes so that participants won't become disaffected or won't "squeal" to law enforcement agencies? What incentive or sanctions can enforcement agencies develop to induce participants in illegality — ancillary personnel, facilitators (accountants, attorneys, etc.) or observers — to reveal knowledge of offenses?

Despite the need for research, it is safe to speculate that the overall output of cases generated by one detection strategy is likely to be different than that generated by another. Contrast, for example, the different kinds of information available from insiders, victims, inspections, disclosure, and surveillance. Although these differences are interesting, the important issue is their impact on enforcement policy. Case mobilization is a selection or sampling technique, a strategy by which some presumably non-random sample is drawn from an unknowable population of offenses. If different mobilization strategies create different samples, it is important to understand the nature of these differences. The associated policy question considers appropriate ways to manipulate and allocate detection strategies to create a sample that is representative of some enforcement objective.

Three other questions about the nature of detection strategy are appropriate. The first moves away from concern for differences in the characteristics of violations detected toward concern for the quality of the intelligence generated. Are some strategies more accurate than others? One might suspect, for example, that citizens complain about matters which may not constitute a violation, and that more sophisticated complainants and agency personnel engaged in proactive mobilization would be more likely to spot actual law violations. It is charged that corporations often allege violations by their competitors that are of questionable accuracy. Are these speculations and charges supported empirically? Do strategies vary in temporal qualities of offenses detected? How "stale" are violations by the time they are detected? One might expect that matters generated by surveillance would be more likely to be on-going and less likely to be "stale" than matters generated by victim complaints.

A second question relates to deterrence. A more formal consideration of deterrence is contained in the next major section of this paper, which deals with sanctioning. However, there are important deterrence issues implicit in the design of an enforcement system. Where offenders know that their activity has little likelihood of detection, the deterrent value of sanctions imposed for their offense is irrelevant. Presumably, if offenders are rational, they will not be deterred. Indeed, in some enforcement contexts where the likelihood of detection to some extent can be quantified (for example, IRS audit categories) and therefore the calculation of risks made by potential offenders, it is arguable that enforcement plays a more central deterrent role than does sanction. In any event, an interesting research question concerns the awareness of the subjects of enforcement of detection strategies, of their calculations of associated detection probabilities, and generally of the associated deterrent value of particular mobilization strategies.

A related issue concerns secondary deviance, specifically the impact of enforcement strategy on the nature of the execution of illegality. How are offenses covered-up or modified to lessen the likelihood of detection? Some of the common strategies involve the use of nominees, dummy or fictitious persons, misrepresentations in required disclosures, false books and records, double sets of books, laundering of funds, creation of slush funds, computer accounting manipulations, and the bribery (whether blatant or subtle) of potential whistle-blowers, complainants, or enforcement agency

personnel. What is the relationship of enforcement strategy to cover-up strategies of these kinds?

Enforcement Policy

In this discussion the development of enforcement policy -- the allocation of agency resources to particular enforcement strategies and discretionary decisions about the targets of enforcement -- is considered. Executive or legislative mandate to some extent may dictate enforcement policy. Agencies may be required to conduct inspections or compel disclosure, for example. By virtue of the resources allocated to agencies, their choice of enforcement strategy may be limited to less costly methods. But generally, enforcement agencies are free to define enforcement strategy and assign priorities to various methods. How do agencies differ in their use of various enforcement strategies, and what are the various sources available?

Agencies do differ, and a major source of this difference comes from variability in the information generating capacity of the offenses relevant to particular agencies. Contrast, for example, a consumer fraud unit with the IRS. Because of the differences between consumer fraud and tax fraud, the role of complainants may be more effective in the former case and the role of audits more effective in the latter. Even so, differences in enforcement strategy in agencies of the same kind -- federal and state tax commissions, different banking regulatory agencies, federal and state securities commissions -- need to be fully explored.

A second policy matter concerns enforcement targets rather than strategies. Agencies, especially where proactive, often make discretionary choices about where to focus detection. Priority may be given to smaller offenses that generate large per capita victim losses, or the reverse. More serious offenses of small mangitude (i.e. the embezzlement of $1,000) may receive greater attention than offenses of greater magnitude considered less serious (i.e. a conflict-of-interest situation that generated $1,000,000). Discretion may relate to the size of the targets of investigation or to the amount of resources necessary to investigate them. Antitrust enforcement may involve IBM or Kodak, or relatively small corporations in less concentrated industries. Securities enforcement may pertain to Lockheed and Gulf Oil, or to newly emerging corporations that seek to market their stocks publicly. Discretion may favor the allocation of resources to offenses involving poor or naive victims or highly visible victims (movie stars and other "beautiful people"). Discretion may pertain to offender characteristics -- as in the assignment of audit categories by the IRS -- or to the social role of offenders in an illegality -- for example, the SEC "access points" theory, in which the professional facilitators of offenses (accountants, attorneys, brokers) rather than the offenders may be the primary targets of enforcement. These comparisons suggest the value of research that attempts to understand the correlates of agency enforcement policy.

Enforcement Impact

This topic is an extension of the previous one. Enforcement agencies vary tremendously in the outcomes of their social control activity, and they are so perceived by Congress (Subcommittee 1976), the public, and presumably

offender populations as well (see, for example, Sullivan 1977). The question, of course, is why this is the case. How can one account for different enforcement impact? One first must define the term "impact," a task not undertaken here. Indicators of impact may include the presence of scandals in the industry being regulated, agency track record in the courts (especially the appellate courts), agency enforcement case load, the magnitude of fines, other awards or penalties, some estimate of deterrence or the extent of compliance with regulations, and the like. Next, one must seek comparison groups for which as many of the extraneous sources of variation as possible can be controlled. This can be done through a cross-sectional study of several agencies which, because of jurisdictional overlaps or duplications, are somewhat comparable in enforcement goals, or through a longitudinal study of a single agency and changes in impact over time. One may contrast the three federal agencies with jurisdiction over bank regulation, or contrast U.S. Attorneys offices in different districts or particular kinds of regulatory agencies in various states.

An interesting comparison would contrast the U.S. Securities and Exchange Commission and the U.S. Commodities Futures Trading Commission. Both have similar regulatory responsibility and similar enforcement problems, but radically different ratings of the quality of their enforcement program (Subcommittee 1976, Sullivan 1977). Are the relatively positive and negative ratings, respectively, a reflection of the forty-year discrepancy in agency age and the greater "maturity"," experience, and, perhaps, respectability attained by the SEC, or do they reflect differences in agency organization, enforcement policy, enforcement strategy, or patterns of illegality that each encounter? What were the perceptions of the enforcement impact of the SEC when it had been in existence for only several years? This agency has attained its greatest aggressiveness in the enforcement area during the last decade. What accounts for this change -- charismatic leadership, changes in the economy and the nature of the illegal activity it fosters, Watergate, normative change, change in agency structure or personnel, or the accumulation of years of prestige and credibility? Explanations of this kind are difficult, of course, but they are central to policy interests concerned with the development of effective enforcement of laws pertaining to white collar offenses.

The Cost of Enforcement

An important issue in the design of enforcement systems is its cost, that incurred by investigation, prosecution, and delivery of sanctions, as well as by the targets of enforcement (to comply with investigative subpoenas, hire counsel, defend themselves, etc.).[21] Although estimates of aggregate costs may be illuminating -- for example, estimates that the Federal government devoted 84,773 man-years to regulation in fiscal 1976 (Subcommittee 1976, p. 6) -- it would be much more useful (and more difficult) to have estimates broken down by type of enforcement strategy or type of offense.

21 This leaves aside the matter of the costs associated with compliance with goverment regulations. Here we consider the costs incurred by enforcement agencies and enforcement targets associated with allegations of deviance.

With regard to enforcement strategy, for example, how may person-hours and units of computer time are typically devoted to surveillance efforts per prosecuted case? What is the relationship of the costs of inspection systems to the quantity and quality of violations detected by these efforts? Clearly proactive detection strategies are more expensive than reactive strategies. But what costs are associated with the subsequent investigatory effort? How many hours are devoted to investigating complaints by alleged victims relative to the number of complaints that result in prosecution? How does that figure contrast with the investigatory effort allocated to violations detected during inspections?

Attempts to break down enforcement costs by type of violation is considerably more difficult. However, it would be useful to know the difference in resources allocated to the investigation of offenses (all other things being equal) by organizations and by individuals, by single parties and by conspiratorial arrangements, by recidivists and by novice offenders, that generate witting and unwitting victims, and that do or do not involve elements of a cover-up. It would be useful to have estimates of changes in the costs of investigation as offenses increase in scope, reflected in the number of offenders, number of victims, duration of the offense, physical spread of violative activities, etc.

Clearly, data of this kind are extremely difficult to obtain, and once obtained, their validity and reliablity are questionable. But it seems central to the design of systems of enforcement to have some sense for the costs of implementing particular enforcement strategies relative to the number of violations they uncover, the number of prosecutable or prosecuted offenses detected, the magnitude and seriousness of these offenses, and the distinctiveness of offenses relative to those generated by other enforcement techniques.

The Disposition and Sanctioning of White Collar Illegality

The literature concerned with the disposition and sanctioning of white collar offenses is more extensive than that relating to most of the topics previously discussed.[22] However, the concern has been almost exclusively on the invocation of the criminal sanction, or variability in criminal sentencing, on sentencing differentials between blue and white collar crime, and the deterrent value of criminal sanctions. These concerns are not unimportant. However, they miss most of the "action" by focusing only on the tip of the iceberg with regard to the disposition of white collar illegality. The data presented in Table 2 illustrate his view. The table shows a breakdown of dispositional outcome involving a random sample of almost 2000 persons and organizations investigated for white collar violations by the SEC over the 25 year period between 1948 and 1972. As the table illustrates, only 85 offenders, 4 percent of the original sample, plead guilty or were convicted of securities violations, and therefore, subject to criminal sentencing. The remaining 96 percent of the offenders escaped sentencing because they were found not to be in violation by the regulatory agency (9 percent), because they were not prosecuted at all despite their violation (45 percent) or prosecuted only civilly or

22 A comprehensive view of issues in the sanctioning of white collar crime can be found in the President's Commission Task Force Report (1967).

administratively (37 percent), because the Justice Department declined prosecution (2 percent) or did not proceed with their case (2 percent), or because they were acquitted (1 percent). Although these particular figures are perhaps idiosyncratic to the SEC, they are clearly typical of overall dispositional trends for other agencies. Even for offenders engaged in clearcut illegal activities which carry criminal penalties, the likelihood

TABLE 2

TOTAL OFFENDERS	1934(100%)	
no violation		-180(9%)
violation not prosecuted		-861(45%)
violation prosecuted civilly or administratively		-708(37%)
Total offenders referred for criminal prosecution	185(10%)	
U.S. Attorney declined prosecution		-47(2%)
nolle prosequi		-33(2%)
acquitted		-20(1%)
Total offenders subject to sentencing	85(4%)	

Source: Adapted from Shapiro (1980, pp. 190, 203)

of invoking the criminal justice system is rare, and the eventuality of criminal sentencing is even rarer. A realistic theory of the disposition of white collar illegality must consider the other 96 percent of the offenders. It must seek to understand the conditions that generate noncriminal outcomes as well as criminal penalties. Questions of deterrence surely must consider the deterrent value of prison sentences (in the illustration, only 2 percent of the offenders were sentenced to prison) or of criminal sentences generally, but they also must consider the deterrent value of the entire range of prosecutorial outcomes.

The research implications of this orientation are the subject of this section. Specifically, variable dispositions, prosecutorial success, sanctioning, and deterrence are considered. The topics discussed here relate to the imposition of legal sanctions for white collar illegalities. Clearly, sanctioning can be and is enacted by non-legal social control organizations as well. An examination of this process might be the subject of interesting research, but it is not specifically addressed in this paper. Most of the topics covered involve questions posed at both the micro- and macro-levels. The former concern dispositional differences across specific offenders and offenses and seek explanations in their characteristics and behavior. The latter consider differences across enforcement agencies,

legal jurisdictions, and time periods, and seek explanations in agency characteristics, prestige, and resources, as well as normative characteristics and normative change.

The Nature of Case Disposition

As the data presented in Table 2 suggest, a broad range of outcomes may befall a matter investigated by enforcement agencies. This range differs by agency and its legal powers and options, but these results include non-prosecution, civil, administrative, or criminal prosecution, and informal undertakings and ancillary remedies. The legal dispositional outcomes of private litigation include civil, treble damage, class action, shareholders derivative suits, and the like. Offenders, then, may be spared sanctioning, or may be imprisoned, placed on probation, enjoined, disbarred, divested, fined, sued, have their license or business operations suspended or revoked, be ordered to make restitution or rescission, investigate themselves, restructure their organization, or surrender themselves to the control of a receiver.

The consequences of lawbreaking can be strikingly different as a result of the mode of prosecution employed. At one extreme, business activities may continue as before, though enjoined against future lawbreaking. At the other extreme, these activities may be permanently halted by the revocation of licenses or forms of registration, or by the imprisonment of the business leaders and operators. Alternatively, the structure of business operations may be substantially altered through legally induced changes in organization, leadership, operations, dispensation of funds and materials, and the like. Although each of these outcomes may result in the temporary cessation of the illegal activities, they are potentially different in their impact on the offenders, the business community and its constituency, on deterrence and recidivism, and in their social costs. A consideration of the conditions under which one or another prosecutorial method is employed and one kind of sanction or another imposed is by no means a trivial matter.[23]

In the case illustrated in Table 2, more than half of all offenders were not formally prosecuted, despite the involvement of most of them in prosecutable offenses. Although this proportion probably varies across agencies, it reflects the most common response to violations and, therefore, is worthy of attention. What are the characterisitcs of offenses (their severity and immediacy), offenders, victims, and the investigatory process, that are associated with non-prosecution? Why are some participants in an offense prosecuted and others not? What are the typical "rationalizations" or "justifications" given by enforcement agencies for non-prosecution? Do rates of non-prosecution vary by agency or by jurisdiction across agencies of similar kind? Do the justifications for non-prosecution differ across agencies? What accounts for cross-agency differences -- offense and offender-related characteristics or agency-related characteristics? Is

[23] For an example of the kind of analysis described here, see Shapiro (1978).

there a relationship between the maturity of agencies and the legislation they enforce and the proportion of cases prosecuted?

Of course, a substantial proportion of offenses are prosecuted, often with more than one prosecutorial mode employed (for example, a civil injunction might be obtained against individuals and corporations; then subsequently the individuals may be indicted for these violations). Many of the same questions concerning the correlation of offense-related and agency-related characteristics suggested earlier with respect to non-prosecution are appropriate to variable prosecution. Before analyses of this kind can be undertaken, however, it is critical that offenders be sorted into categories for which the same prosecutorial possibilities are available. For example, the likelihood of invoking criminal penalties should be examined separately for offenses that carry only criminal penalties, that carry both civil and criminal penalties, that carry both administrative and criminal penalties, and that carry civil, administrative, and criminal penalties.

In addition to exploring the effect of offense-related and agency-related characteristics on mode of prosecution, the effect of alternative forms of prosecution on the imposition of a particular type of prosecution should be explored. Do forms of prosecution complement or substitute for each other? How do offenses with multiple forms of prosecution imposed differ from those with single forms? The macrolevel questions pertain to different rates of prosecution by enforcement agency, controlling for agency differences both in prosecutorial opportunities and in the composition of offenses prosecuted. Do agencies of similar kind vary in the extent to which they prosecute matters criminally or in the ratio of civil to criminal prosecution? How might such variability be explained? Do these rates vary over time within the same agency?

The previous discussion assumed that the determination of prosecutorial mode was located in a single organizational context. However, few enforcement agencies are vested with full prosecutorial authority. Many agencies must go to outside organizations to prosecute their cases criminally and sometimes civilly. Consideration of disposition, therefore, should include the interorganizational process through which cases flow from investigative agencies to prosecutorial agencies, and the role of the latter agencies in determining disposition.

Prosecutorial agencies are rarely compelled to prosecute all cases referred to them. Research on the cases referred from investigative to prosecutorial agencies which are declined promises to be rich. At the microlevel, this provides a second opportunity to evaluate the effect of offense and offender-related characteristics on the likelihood of prosecution. On the macrolevel, the research provides an opportunity to systematically explore cross-agency differences in disposition as they are reflected in agency relationships with a single prosecutorial agency. For example, in the context of federal criminal prosecutions, Robert Rabin (1971, 1972) has found substantial cross-agency variability in rates of cases declined by U.S. Attorneys, ranging from 10 percent to 90

percent.[24] What are the characteristics of the agencies, their enforcement and dispositional processes, or their relationship to prosecuting agencies that account for differences of this magnitude?[25]

Prosecutorial Success

The transition between prosecution and sanctioning is marked by a critical factor -- successful or non-successful prosecution. Because the rate of successful prosecutions for white collar offenses is so high, it is easy to neglect this phenomenon. But two questions must be addressed: When are prosecutions lost? How are prosecutions won? The former question involves the correlates of unsuccessful prosecution of individual cases — strength of evidence, staleness, nature of the victimization, magnitude of the offense, offender characteristics, etc. — and on the macrolevel, explores differential rates of unsuccessful prosecution by agencies across jurisdiction, and over time. If macrolevel variation is found, explanations concerned with different levels of prestige or expertise, typical patterns of illegality prosecuted, agency aggressiveness or passivity, the recency of legislation being enforced, and public and judicial attitudes about white collar crime might be addressed. High rates of successful prosecution may reflect strong public attitudes against white collar crime and aggressive enforcement agencies; however they may instead mirror cautious passive agencies which prosecute only the most trivial and clear-cut offenses. Explorations of this kind concern all prosecutorial modes — civil, criminal, administrative, and private suits.

The latter question involves the way in which prosecutions are successful. Specifically, it asks whether prosecutions are terminated by litigation or by consent, guilty or nolo contendere pleas. It is unclear whether the proportion of guilty and nolo pleas on the criminal side, and consents and settlements on the civil and administrative side, are as high in the white collar area as the guilty plea is in the prosecution of street crime. Nonetheless, the proportion is high enough to merit study. Research is underway concerning cases of white collar plea bargaining by federal prosecutors (Katz 1979b) and defense attorneys (Mann 1978). However, research must be devoted to the process of bargaining across prosecutorial

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24 These range from 90 percent for ineligible sales of food stamps referred by the Department of Agriculture) to 50 percent and 40 percent for draft violations (Selective Service) and gun control violations (Alcohol, Tobacco, and Firearms, IRS), respectively, to 10 to 15 percent for violations such as mail fraud (Post Office), food and drug violations (FDA), securities violations (SEC), income tax fraud (IRS), immigration violations (Immigration and Naturalization Service), and highway safety violations (Department of Transportation).

25 Rabin suggests that correlates of the declination of a given referral include "caseload, magnitude of the violation, court-perceived criminality of the offense, special characteristics of the defendant, existence of alternative sanctions, adequacy of the case, equality of treatment of regulated parties, and special interest influence" (1972, pp. iii-v).

modes besides the criminal one, and the correlates of litigation versus consent. What are the characteristics of offenses and offenders who choose to litigate charges? Perhaps more important than the extent of culpability or severity of the offense in explaining this variation are factors such as the prestige of the offenders and defense counsel, the magnitude of the charges, or the novelty of the charges. On the macrolevel, one might ponder cross-agency differences and within-agency differences over time in rates of consent and consider whether the recency of the law, or the prestige and reputed vigorousness of the prosecuting agency are related to this difference.

The Nature of Sanctions

Given successful prosecution, sanctions must be imposed. White collar crime sanctions vary both in severity and in kind, both within and across modes of prosecution. Criminal judgments include fines, prison sentences, suspended sentences and probation, as well as "alternative sentences" that now are coming into vogue -- requirements that offenders make public addresses about their "evil ways," that corporations make charitable contributions, that individuals engage in community service, etc. (see Bureau of National Affairs 1976, and Renfrew 1977). Sanctions emanating from administrative proceedings can involve revocation of licenses or forms of disbarment, but may also involve lesser penalties including suspensions of business or personnel, monetary fines, and required changes in organizational structure or management. On the civil side, the permanent injunction is the typical penalty, although imposing other ancillary remedies -- restitution or rescission, disclosures, inspections and audits, limitations on business practice, receiverships, and the like -- may increase the severity of the injunctive sanction. With regard to private civil suits, one may argue that the size of an award has some relationship to severity of sanction, although the relationship is by no means clear.

Some kinds of penalties are readily quantifiable -- magnitude of fines, length of imprisonment or license suspension -- facilitating comparative research. However, many sanctions cannot be quantified. Furthermore, different offenses carry different sanctioning possibilities, both in kind and in extent. Similar offenss carry different sanctions across jurisdictions. Therefore, comparative research on the imposition of sanctions is fraught with difficulties. The solutions are not addressed here, but the problems must be seriously evaluated before meaninglful research can be conducted.

Ideally, a series of comparisons would be desirable: sanctioning differences for different parties participating in a given offense, for parties engaged in similar offenses, for parties engaged in different offenses, and for similar offenses committed in different jurisdictions or in different eras. For example, what were the various fates of the participants in the price-fixing conspiracy in the heavy electric equipment industry; how did these sanctions compare with those typically levied for price-fixing and to those typically imposed for bribery or securities or tax fraud; and how did these sanctions differ from the price-fixing penalties imposed in different federal districts or in the 1920s or 1970s rather than the 1960s?

The microlevel questions pertain to the sources of the considerably disparate sanctions imposed on various offenders. Characteristics of individuals and organizations, the nature of their participation in the offense, matters of recidivism, and the like, are invoked in this analysis. Macrolevel questions involve what appear to be substantial cross-jurisdictional and longitudinal disparities in sanctioning, at least criminal sanctioning.[26] Interesting theoretical questions emerge if sanctioning differences between jurisdictions or over time remain, even after controlling for offense- and offender-related characteristics. Do matters of public opinion or of normative climate account for these differences, or do they reflect instead matters such as the composition and organization of the "judiciary," case-load and incidence of particular kinds of offense? Questions of fairness and equal justice are also salient if differences are found. Systematic research is needed to measure differences of this kind for administrative and civil as well as for criminal sanctions. What is the source of these differences? Do they remain when one controls for offense and offender-related characteristics? What is the role of the normative composition of various jurisdictions and various eras on sanctioning differences?

Deterrence

The study of the general preventive effects of punishment or deterrence has been an important research area in the field of criminology (Andenaes 1966a, Chambliss 1967, Zimring 1973). Perhaps one of the major findings of this body of research concerns the greater deterrent value of sanctions imposed on behaviors which are "instrumental," or rationally calculated, rather than "expressive," or emotive, in motivation (Chambliss 1967). In contrast to traditional forms of crime, white collar crimes are thought to be more instrumental than expressive. To the extent that it can be assumed that white collar crimes are usually the response to a utilitarian calculus of the probability of economic gain, this form of criminality is particularly appropriate for the study of deterrence.

In the literature concerned with the deterrent value of various sanctions, one frequently finds the assessment that, as presently structured, the proscribed penalties for white collar crime have little deterrent value. This usually is attributed to the low probability of such illegality being detected (a problem discussed in the section on

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26 For example, a small study conducted by the U.S. Attorney's Office of the Southern District of New York (SDNY) contrasted the likelihood of imprisonment and the average length of sentence imposed by offense in its district and across all federal districts during a six-month period in 1972 (Bureau of National Affairs 1976). The study found, for example, that the likelihood of imprisonment for bribery was 25 percent and 42 percent, or for securities fraud was 67 percent and 22 percent for the SDNY and all other districts, respectively, or that the average length of prison terms for tax violations was 5.9 and 10.45 months, or for perjury 5.2 months and 28 months, respectively.

enforcement), the small fines or other monetary penalties relative to the profit accrued from the offense, and the low probability that persons will receive criminal penalties (either because of the inability to convince the public of moral culpability or the inability to attribute corporate criminality to policymakers) (Kadish 1963, Dershowitz 1961). The response to these difficulties has been to suggest that sanctioning systems be restructured -- for example, impose fines so that all illegal profits are recovered and all victims compensated (Dershowitz 1961), or introduce standards that create affirmative duties and responsibilities for corporate policymakers over the behavior of their employees (Dershowitz 1961, Kadish 1963). Another suggestion proposes that since the stigma of imprisonment has more impact for so-called white collar persons than for others, these persons should be jailed more frequently (Geis and Edelhertz 1973).

Although these proposals seem compelling, they tend to ignore the vast range of illegal behaviors to be deterred and the multiplicity of potential prosecutorial settings invoked, and they substitute intuition and simplistic assumptions for research findings. Among the distinctions that must be made and then empirically evaluated include specific deterrence versus general prevention, the deterrent effects of various types of prosecution (civil, criminal, administrative) as well as the traditional concern for the certainty and severity of sanctions, and the different consequences of sanctioning persons and organizations. For most of the research questions described here, it is necessary to locate analysis within particular kinds of offenses and evaluate the consequences of altering the mode and targets of prosecution and the nature and delivery of sanctions for the same kind of behavior. To be unattentive to offense-related differences is to confound the research with so much clutter that an already difficult analysis will become formidable.

Almost all of the research concerning the deterrence of white collar crime has involved criminal sanctioning. This focus is inappropriate for two reasons: the rarity of the invocation of the criminal justice system for offenses of this kind (discussed previously) and the problems of attacking organizational offenses with criminal penalties. Research is needed on the deterrent effects of the various components of the prosecutorial alternatives available. Given an equal certainty of sanctioning, what are the various impacts on offenders and on the general public of injunctions; injunctions coupled with ancillary remedies, such as restitution, changes in management, or special investigations; of administrative penalties ranging from fines to suspension of business operations to license revocation or disbarment; of criminal fines; of prison sentences; of "alternative sentences;" of civil lawsuits? What consequences are associated with charging individuals instead of or in addition to organizations? What kinds of sanctions leveled at which positions in organizational hierarchies have greatest deterrent effect?[27]

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[27] These latter questions, of course, assume kinds of illegal activities that involve the complicity of organizations and persons in managerial roles -- bribe paying, price-fixing, or securities violations. The allocation of sanctions is somewhat clearer where offenses are more easily attributable to individuals -- the acceptance of bribes and kickbacks, self-dealing, etc.

A different sort of question relates to the deterrent effect inherent in the conduct of prosecution and delivery of sanctions. What is the impact of private as opposed to public administrative proceedings, of secretive grand jury proceedings versus more public forums, of televised congressional hearings (such as Watergate), or of extensive litigation versus quiet consent agreements? What is the impact of the publicity of sanctions — a front page New York Times story on William F. Buckley's SEC consent injunction (Miller 1979c) in contrast with the typical injunction which earns an inch or two on one of the back pages of the Times, if at all? Survey research which evaluates the knowledge of various white collar crime audiences about the delivery of sanctions and of their reaction to sanctioning would be valuable.

Studies of stigma also would be useful. How do various sanctions generate stigma and how do they differ? How do organizations experience stigma? When do the misdeeds of individuals have a stigmatic effect on the organizations for which they work? One way of addressing these questions is to research the consequences of prosecution and sanctioning of white collar offenders. What happened to those convicted in the G.E. price-fixing case, to Judge Renfrew's price-fixers sentenced to deliver public speeches on the evils of that crime, to the Watergate particpants who did and did not serve prison sentences, to the multi-national corporations involved in the international bribery scandals and subject to SEC injunctive proceedings, and so on? Did individuals face different employment prospects than others of their same age, experience, and previous position? Do sanctioned individuals find that non-professional social relationships are strained or impaired? Do convicted corporations have difficulties with their stockholders? Do they have difficulty finding new capital, making new contracts, or generating sales? Is their competitive position in their respective industries impaired? Do they experience boycotts and other informal social sanctions? What seems remarkable, from non-systematic reflection, is the rarity of at least non-subtle consequences for individuals and organizations of the invocation of sanctions for white collar illegalities. Research is needed to consider the potential stigmatizing effects inherent in the nature and delivery of various sanctions, and of the management of stigma by those who have received sanctions.

Finally, deterrence is not the only relevant consideration in the choice of sanctions. The severity in financial terms and in terms of deprivation of liberty that may be needed to deter white collar crime relative to more traditional crime may be unjustifiable to a public that does not consider these victimizations as serious. Research directed to finding the public's attitude toward different sanctions for various types of white collar crime is needed.

III. CONCLUSION

The first part of this paper reviewed critically the conceptual themes in the literature on white collar crime, expanded and integrated them, and proposed additional distinctions that might be useful in defining and differentiating white collar offenses. That discussion leaves to the reader the difficult task of selecting an appropriate definition of white collar crime and constructing a typology of offenses. The second part of the paper proposed an agenda of research with regard to white collar crime. Like the first part, this part, too, leaves tasks for the reader. The discussion is incomplete in two respects: the research topics are stated so generally and expansively that they virtually cannot be pursued without further specification; and the topics are arrayed as in a smorgasbord -- presumably equally worthy of our appetite -- without any indication of their relative merit or importance. Again the reader is left to select the possible inquiries that are of greatest relevance or immediacy, and then once selected, of operationalizing the research question.

These "omissions," of course, were intentional. It is meaningless to propose a typology of white collar crime stripped from the theoretical, research, or policymaking enterprise for which it is to be used. Similarly, the "constituencies" of white collar crime and the sources of their concern are so diverse that research priorities and research design necessarily must be left open. This discussion concludes with some reflections on the task of setting priorities and of designing research.

Matters of priority may simply reflect the social location of the particular "constituent." Economists may be more interested in antitrust violations than embezzlement. Preferences of psychologists most likely are the reverse. The State Department presumably is more interested in international bribery than in crimes against business. Business organizations most likely are more concerned with employee theft, pilferage, and embezzlement than with international bribery. Officials in the Justice Department may be more interested in the use and impact of the criminal sanction than with civil or administrative forms of disposition (although a good argument could be made that insights about the relative impact of criminal and non-criminal rememdies would be invaluable to those with jurisdiction over criminal remedies).

More subtle choices are involved in the design of a research program. What is the trade-off between basic and applied research, between more academic interests and those of policymakers? Many of the macrolevel questions described in the paper -- about the sources of cross-cultural or cross-jurisdictional patterns of illegality or enforcement or of their change over time -- although interesting for theoretical purposes, may be of only remote relevance to policymakers for whom spatial and temporal context is fixed and immediate.

Another question concerns the trade-off between description and explanation. Ordinarily, one would not design a program of research concerned primarily with description. However, it is incredible how little we know about patterns of white collar illegality and enforcement. Even participants in the process are frequently unaware of the big picture that

their discrete activities have created -- the kinds of matters investigated, parties prosecuted, sanctions imposed, etc. The choice is between research that asks who is the violator, in what way are violations occurring, what enforcement strategies are being utilized to deal with them, and what dispositions result from these efforts, and research that asks why these people are violating, why these kinds of violations are occurring, what accounts for the use of these enforcement strategies, and what explains the variability in dispositions and sanctions imposed. These two sets of questions are not necessarily mutually exclusive, but the design of research pertaining to one may be incompatible with the design of research pertaining to the other.

Another choice concerns the short-term or long-term consequences of research. For example, the implementation of findings involving aspects of enforcement strategy or enforcement targets may have almost immediate impact for social control. The consequences of implementation of findings pertaining to deterrence, enforcement impact, or normative change may not be felt for years. A related concern pertains not to the timing of the impact of research, but rather to the scope and timing of the research itself. Many of these questions require complex research designs and enormous commitments of time and money for their execution. The immediacy of policy questions and the limited resources of policymakers and academic researchers may preclude undertaking projects of this kind.

Each of these trade-offs must be evaluated with respect to the setting in which the research is contemplated. Similarly, matters of research design, particularly involving the selection of the research site, must derive from the interests and priorities of those contemplating the research. The choice of a research setting will reflect substantive interests, concern for generality or specificity, concern for description or explanation, preference for academic or policy concerns, and perhaps most of all, matters of access to data.

The research questions proposed in the previous sections only begin to scratch the surface of the enormous pool of potential inquiries about aspects of white collar crime that might be conducted. The research agenda is incomplete, then, in the collection of topics proposed as well as in its omission of definition, specification of priorities, and operationalization. Although the tasks incumbent on the reader to fill in these omissions may be substantial, they pale in the face of the tasks associated with executing the research. As noted earlier, many of the topics suggested will require substantial commitments of time and resources. Nonetheless, the tasks are not insurmountable. In recent years a flurry of research has been undertaken, overshadowing in theoretical scope, methodological rigor, and policy relevance the accumulation of a third of a century's worth of literature on white collar crime. And the work is just beginning.

In characterizing the work on white collar crime over the past quarter of a century, Gilbert Geis (1974, pp. 284-5) noted that the "white-collar crime researcher might write an article, then a book, and later perhaps a general overview of the theory and substantive content of work on white-collar crime. Then he moves along." Unlike the stereotypic overview described by Geis, this paper looks to the future rather than the past. It serves not as the bridge of professional respectability that leads away from

attention to white collar crime; rather it hopefully provides some of the building blocks with which others can work and construct a stronger bridge leading toward important systematic work in this area.

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