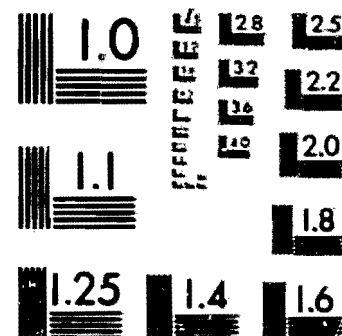


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Data Sources on White-Collar Law-Breaking

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Data Sources on White-Collar Law-Breaking

by
Albert J. Reiss, Jr.
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U.S. Department of Justice
National Institute of Justice

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September 1980

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National Institute of Justice
Harry M. Bratt
Acting Director

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Abstract

This report assesses the current status of federal statistical information systems on white collar law-breaking from a perspective of the social organization of information systems. It concludes that vast amounts data exist on white-collar law violations, but that problems in conceptualization, classification, and counting are barriers to the merging of information into statistical series.

A new definition of white-collar law violation is offered that separates social status from law violation and takes into account administrative and civil as well as criminal violations of law. The importance of theoretical as well as statistical models in social reporting is emphasized. Special attention is drawn to compliance and penalty law enforcement models in organizing statistical reporting on white-collar law violations.

Major requirements for a uniform statistical reporting system on white-collar law violation are stipulated. The emphasis in the report falls on the development of law enforcement indicators including indicators of organization, as well as persons, as victims and violators, and on events. The absence of indicators on sanctioning and on recidivism in white-collar law-breaking is considered.

Throughout the report attention is drawn to the importance of considering the development of indicators of white-collar law violation as part of the institutional organization of federal statistical functions.

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PREFACE

The original application for support of this research was entitled "Sources of Data on White-Collar Crime." The major intent was to review and analyze major data sources relevant to research and statistical reporting on white-collar crime. The dominant perspective for that review and analysis was one that we have used in the past-- investigation of the socially organized ways that events come to be known and defined in accordance with concepts of "crime." To accomplish this objective we proposed examining administrative records and agency audits of some thirty federal agencies and offices to learn why and how information on "white-collar crime" is generated. We envisaged a series of reports, one for each of these agencies, and an overall summary of their implications for statistical reporting and research on white-collar crime.

The report that follows represents a departure from that format in two significant ways.

For one, readers will note that the title has changed to "Data Sources on White-Collar Law-Breaking." The shift is more than cosmetic. Our investigations quickly convinced us that the distinctions between civil, criminal, and administrative law and their definitions of violations and penalties are artifacts of these bodies of law and their administration, and that these distinctions are applied in practice more often than not in arbitrary and highly variable ways. They do not afford a satisfactory basis for defining for social descriptive purposes a set of events usefully treated as "white collar," as distinct from other kinds of violations of law. We felt that it was important to distinguish these violations from other major forms of law violation--those commonly denoted as common or ordinary, organized, and political offenses. We propose, therefore, a new definition of white-collar law-breaking in the first chapter, one that we think reflects express and latent ideas about violations that are already important to law and to action. Although we think it has intrinsic merit for theory and research as well as for statistics, for law and for action, the definition may seem to our readers overly didactic and embedded in a less than attractive package.

As discussed in the first chapter, we considered but rejected the idea of using another term more nicely in accord with the denotative meanings of our definition than is the term "white collar." Despite its being somewhat archaic sartorially as well as theoretically, we find that "white-collar" crime has so strong a position in the common vocabulary, and now even in a statute, as well, that it would be idle to seek to replace it. Even more than other

uses of the term, this may allow us to have our cake and eat it too, when it comes to various ideological and emotional connotations of the term.

Our readers also will note that in place of a large number of separate reports, they are encumbered with an unusually lengthy and often seemingly repetitive document on data sources. There are a number of separate reports prepared in connection with this study, most notably one prepared by Susan Long, The Internal Revenue Service: Measuring Tax Offenses and Enforcement Response, that is to be published as a separate report, and two case studies prepared by legal interns--"Legislative and Administrative Contexts of Federal Trade Commission Data" by Janet Berney and "Legislative and Administrative Contexts of Food and Drug Administration Data" prepared by Michael Heaviside--that were especially helpful in preparing Chapter III. Elizabeth Stevens, Martin Mistretta and John Vincent of the BSSR staff were helpful in collecting information from a large number of agencies. We can only hope that our readers will be as charitable in the toleration of seeming repetition as was one of our referees who generously remarked: "The repetition is of a peculiar kind: it is not that the same things are said in the same way, as is often the case with newcomers, but only that the argument is so complex that it becomes necessary to qualify, again and again, so that early points have to be brought in, to make certain that the full complexity of the issue being addressed is taken into account." We know that we have not heeded his advice to reduce redundancy by "difficult" and "tough" decisions about what goes where and what was to be retained. We seem to have a greater penchant for cloning than pruning, at least when it is our prose.

Our joint venture into data sources on white-collar law-breaking is in debt to a host of sources, many of which conveniently lie beyond recall.

We are indebted, first of all, to our colleagues. One of us has had the privilege of being stimulated by colleagues and students at Yale University through participation in seminars and advisory roles in the Yale University Research Agreements Program on White-Collar Crime directed by Stanton F. Wheeler. The insights of Stan Wheeler, Robert Clark, and Jack Katz have informed our approach to data sources and stimulated our defense of statistics. Special debts are owed to doctoral students in sociology at Yale who worked with Wheeler and Reiss, especially Susan Shapiro, Donald Scott, Kenneth Mann, and David Weisburd; and to Diane Vaughn, post-doctoral fellow in The Sociology of Social Control at Yale.

We are especially indebted to the two "Susans"--Susan Long and Susan Shapiro--who have contributed in many ways to our efforts. Susan Long has remained one of our most helpful and persistent critics as well as providing the project with a major study on tax enforcement. Susan Shapiro's doctoral dissertation, "Detecting Illegality: A Perspective on the Control of Securities Violations" is an exceptionally fine case study of a regulatory agency. Her seminal work over a half-dozen or so years of graduate work has contributed immeasurably to our own.

Some years ago when one of us chaired a Social Science Research Council Committee on Legal Indicators, David Seidman prepared an exceedingly useful memorandum on legal indicators, relying in part upon work by Stephen Bruce on FTC indicators of white-collar crime. David Seidman subsequently probed the possibility of developing indicators of white-collar crime more deeply in a report to the Yale RAP. Though he is far more pessimistic about the future of indicators than are we, his thoughtful summary was helpful.

We have had the benefit of an advisory committee who met with us individually rather than collectively--Marshall Clinard, Donald Cressey, and James F. Short, Jr.,--and of two readers chosen by NIJ, William Chambliss and Gilbert Geis. We owe a special debt of gratitude to the latter external referees because they provided most helpful suggestions. We admire their willingness to rise above anonymity and we appreciate more than we can say the value of their commentary.

The Staff of the National Institute of Law Enforcement and Criminal Justice, now the National Institute of Justice, functioned as gentle critics as well as project monitors, supervisors, and directors. Bernard Auchter, Fred Heinzelman, and Robert Burkhardt provided helpful guidance, flexible administration, and warm support for an effort that straddled the internal domains of NIJ and BIJ.

The Bureau of Social Science Research staff provided logistical support throughout the project. We are especially grateful to Karen Clark at Yale, and Norma Chapman and Mary Kearney for their patience and skill in word processing, and to BSSR's librarians, Connie Zuga, Lucy Duff and Mary Hartz, for their knowledgeable pathfinding through the mazes of federal documentary data bases, Molly Skardon for copy editing of portions of the manuscript. Elizabeth Stevens not only was responsible for procurement and maintenance of the project's bibliographic collection but also managed the production of this and other reports of the project.

EXECUTIVE SUMMARY

The Concept of White-Collar Crime

Interest in statistical information on white-collar law-breaking was awakened by Edwin Sutherland's (1940) pioneer writings on white-collar crime. The concept of "white-collar crime" is an unfortunate one, however, since it needlessly encumbers thinking with concepts of both "white-collar" and of "crime," and it complicates explanation with description.

A major problem in using occupation or socioeconomic status as a defining element in crime is that the element cannot be used at the same time as an explanatory characteristic because it is not allowed to vary independent of the definition. This is a mistaken explanatory strategy because the major theories about what causes crime utilize socioeconomic (vertical) status as an explanatory variable. Excluding socioeconomic status ("white-collar") as a defining characteristic helps to distinguish events from participating statuses in events. The kind of behavior made problematic for explanation, moreover, is perpetrated by both individual and organizational actors. White-collar socioeconomic status is at best a dubious way to characterize organizational actors.

The concept of crime ordinarily carries with it defining elements of culpability and of penal sanctions or a penal code. Crimes are typically contrasted with civil and administrative infractions or violations. Much behavior that is formally the same in terms of its occurrence is legally different only because responsible officials decide that the civil or administrative process affords more certain, rapid, economic and effective remedy than criminal action.

This blurring of distinctions between civil and criminal matters, argues for a definition of white-collar violations of law that encompasses all behavior where penalties can be imposed, regardless of the form of the proceeding. The form of the proceeding or the legal authority under which the penalty is leveled then can be allowed to vary as a property relative to behavioral violations of law.

Having rejected the implications of both "white-collar" and of "crime," the troublesome issue remaining is whether one should continue to refer to these matters as "white-collar crimes." There is no simple answer to that issue of nomenclature.

This report regards "crimes" as matters that fall under the criminal code and are subject to criminal penalties through a criminal proceeding. There are six related and alternative labels that can be attached to the broader category of behavior to which penalties are attached and that include crimes as a subclass. They are: law violations, infractions of law, transgressions of law, law-breaking, delicts, and offenses. Even more general concepts include misdeed and misconduct, and illicit or actionable conduct. For the most part, these alternative terms are used interchangeably, with a preference in the definition for "law violations to which penalties are attached." The term law-breaking (Wallerstein and Wyle, 1947) also commends itself.

The term "white-collar" is more difficult of substitution in a single word or phrase, as the definition below makes clear. Various considered were "organizational" violations, "violations of institutional position" or "misdeeds of power." Opting finally against neologism, we used the old word "white-collar" in a new sense. The idea of an institutional position of the criminal actor is preserved, but without a specific vertical socioeconomic referent. To the degree that continued use of "white-collar" presupposes certain congeries of occupations as characteristic of violators, the choice to remain with the concept is unfortunate.

White-Collar Law Violations Defined

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

Definitional Elements

The major terms in this definition are defined as follows:

Violations of law includes both acts and omissions (nonfeasance) that are punishable by legal penalty. An action is not a violation unless there is some culpable, i.e., blameworthy, party to the action.

Penalty is the loss, forfeit, or deprivation that may legally be imposed for a violation. The procedure by which the penalty is imposed--administrative, civil, or criminal--is not integral to the definition of penalty and all three types of proceeding may characterize the processing of white-collar violations of law.

Violator may be an individual, a group of individuals, or an organization. There is no presumption that organizational actors must also include individual violators and vice versa.

The legitimate economic or political order includes businesses; government; nonprofit organizations such as charities, foundations, religious organizations, hospitals and universities; political parties; and the organized practice of the "free" professions. Legitimate social organizations are those serving legally permissible, socially accepted purposes. Our definition also includes highly regulated and institutionally structured economic institutions such as securities and commodities markets, real-property holding and exchange, and formal fiducial trusteeship, even when the immediate actors of concern as victims or offenders are private individuals.

Gain includes, in addition to direct pecuniary benefit, the protection or enhancement of opportunities for potential pecuniary benefit and for the avoidance of pecuniary costs or losses, or opportunity costs.

Position is any position within an organization that is being used for illegitimate gain, regardless of the violator's position in the general class structure of society, or any position that an organization or group occupies relative to other organizations or groups.

Influence, power, and trust refer to the command that can be exercised over material resources of an organization, its symbols, its personnel and clients, as well as over its relationships with other organizations or the public, as these enter into the execution of the violation.

Significant power, influence, or trust in a position refers to the magnitude of the degree of control and of the resources of an organization that are subject to a violator's control. A position is deemed to have significant power, influence, or trust when the actions of incumbents must be taken into account by others in the performance of their related roles.

Major Classes of Violation

White-collar violations of law, including white-collar crime, have been defined in a manner that excludes violators and violations that are ordinarily associated with other domains of law violation: underworld or organized crime, political violations, and common or ordinary crime, including crimes of "passion." Each of these types of law violation is briefly defined clarify their differentiation from white-collar violations.

Organized crime violations are those violations of law to which legal penalties attach that involve the illegal use of a violator's position of significant power, influence, or trust (and/or illegal means) in an illegitimate economic or political institutional order for the purpose of illegal gain.

Political violations of law are those violations to which legal penalties attach that involve the use of illegal means (including the illegal use of power) to achieve illegitimate political ends or a substitute illegitimate political order.

Ordinary or common violations of law are those violations to which legal penalties attach that do not involve the use of a significant organizational position.

The primary criteria for differentiating among these classes of violations of law are the legality of the means, of their use, and the legitimacy of institutional orders. Different classifications of violations and different classes of violation can apply to the same natural event. This can be illustrated for what commonly is thought of as a "white-collar crime," the crime of fraud. There may be elaborate forms of misrepresentation in organized crime swindles. There may be a voter fraud designed to capture political power or simply for personal gain. And there are common forms of misrepresentation in ordinary transactions that would hardly qualify them as "white-collar crimes."

The proposed definition of white-collar law-breaking departs then from conventional ones of white-collar crime based on legal categories, the social status of offenders, and their detection and processing in criminal justice systems. Yet, the treatment of statistical sources of information on white-collar law-breaking in this report is in fact relevant to most definitions, since the approach to the measurement and statistical reporting of white-collar law-breaking taken rests in an appraisal of current statistical sources in federal agencies and the requirements that must be met for a uniform system of reporting. From this assessment, a more general treatment of the role of statistical reporting in social control is offered and recommendations made regarding research that is needed to develop information systems on white-collar law-breaking.

Present Focus on Federal System

The current state of our knowledge about the heterogeneity introduced into statistical reporting from statutory, executive, and judicial sources is too limited to take variability among reporting jurisdictions systematically into account. Knowledge about state and local variability is particularly limited since few states

have organized local into state reporting. For that reason alone this report pursues a limited strategy of focusing on federal statutory and regulatory codes and their implementation.

There are additional reasons for focusing on federal violations of the law in explaining the problems of statistical reporting of white-collar law-breaking. Although there are more civil suits and more criminal cases in state and local than federal courts involving white-collar law-breaking, their diversity is greater in the federal system. These federal cases, moreover, cover areas that are generally of less significance at state and local levels, e.g., criminal antitrust, or they are exclusively federal matters, e.g., federal elections.

But, there are shortcomings as well in limiting initial inquiry to federal statistical systems. The extent to which state and local statistical problems and issues mirror federal ones cannot be determined nor can those that are unique to these levels of government and their reporting systems be examined. Less will be learned, therefore, about the kinds of white-collar law violations that are endemic in state and local systems, e.g., cases involving real estate transactions or professional practice. These are matters for exploration in later research.

The main focus of this project on official government reporting systems ignores the fact that there are private systems gathering and reporting information on white-collar violations of law.

The first of these are private social control agencies that have responsibility for regulating some form of conduct. Many of these private regulatory agencies possess sanctioning as well as enforcement powers. In addition to private systems of detection, enforcement, and sanctioning, there are some major private reporting systems that regularly - vide intelligence on white-collar crime. Among them are the media of mass communication, and the special compendia that publish cases or other information on selected kinds of white-collar violations of law, e.g., Trade Cases.

Sources of Information on White-Collar Law-Breaking

There is a common presumption in the literature on crime that there is little available data pertinent to white-collar crime. Indeed, A Framework for Planning U.S. Federal Statistics concluded: "... no data are routinely collected on 'white-collar crime'." (U.S. OMB, 1977:167). Investigation leads to a somewhat different conclusion. There are many and diverse sources of information on white-collar violations of law. The number

of relevant, routinely collected data sources is great. Yet when taken individually, each presents problems of adequacy, interpretation, and use. When taken collectively, they pose substantial problems of collating the separate sources of information and fall far short of constituting a comprehensive information system on white-collar crime.

Modalities of Information on Crime

Systematic official government intelligence about crime is socially organized by three major modalities of intelligence gathering: the administrative record of investigations and decisions about them, sample surveys to detect compliance or violations of law or standards, and the audit of administrative or survey information systems. These modalities are not restricted by function, such as by a presumption that administrative records are management information systems while sample surveys are not. A management system may include all three modalities as parts of an integrated system of intelligence gathering and assessment.

Requirements for a Uniform Statistical Reporting System On White-Collar Violations of Law

Variability in the kind and quality of information available from legislative, executive, and judicial agencies is the major barrier to developing a uniform reporting system on white-collar violations of law. This variability stems from many different sources: the nature of jurisdiction over law and its violations, the history of organizational information on law violation under a particular mandate, and the uncoordinated growth of data storage and information processing and reporting systems. Given myriad sources of variability, only those that impose substantial barriers or limits to developing a uniform system of statistical reporting on white-collar law violations or ones that substantially affect the form such a system might take are considered. Examination of these sources of variability leads quite naturally to the specifications of requirements for a uniform statistical reporting system.

Sources of Variability: Jurisdiction

Requirement 1: That the statistics encompass administrative, civil, and criminal matters.

With the emergence and growth of administrative law and regulation, jurisdiction has come to embrace the scope of authority, capacity, power, or right to act in executive as well as judicial matters. Were one to limit the statistical reporting on white-collar violations of law only to matters that may be adjudicated under the criminal law or those

subject to litigation in the civil courts, a great many transgressions of law--many similar to those litigated or adjudicated--would lie outside the statistical reporting system. The volume and consequences of white-collar matters decided by administrative law judges easily outweigh those decided by civil or criminal court judges and matters detected by regulatory agents and resolved by discretionary decisions of their agencies often loom larger than those detected by criminal enforcement divisions and adjudicated as criminal matters. Although statistics on white-collar violations might be reported separately for criminal, civil, and administrative jurisdictions, a uniform and comprehensive system of statistical reporting on white-collar violations of law should embrace all three.

Requirement 2: That at least in the short-run, the changes related to overlapping and concurrent jurisdiction are monitored for their potential impact on statistical series.

Major changes in law and its administration have consequences for the statistical series of parallel or related federated units. Whenever one unit shifts its law or enforcement and disposition policies or practices it may affect the matters of other units with concurrent jurisdiction. This is particularly true for federal and state statistics where shifts in federal policy and practice are likely to have a profound impact on the time series of both federal and state units.

Requirement 3: The adoption of standard definitions and classification procedures for events regarded as white-collar violations to overcome statutory and administrative variability in defining them.

Variation in the statutory and administrative definitions of violations of law and of powers of enforcement, as well as variation in how matters are detected and processed as legal matters in a federal system have an enormous impact on statistical series of white-collar crime.

Requirement 4: That ways must be found to estimate or account for multiple counts of the same events.

Within the federal system, there exist both concurrent and overlapping jurisdiction among federal departments and executive agencies within the executive branch--a situation that can give rise to difficulties in counting and classifying events since these agencies are not bound to follow uniform rules and practices. The same events can be counted and classified in different ways because of concurrent jurisdiction and because the law allows both civil and criminal proceedings for the same events.

Requirement 5: That there be a clear definition of the universe with decision rules stipulating which white-collar law violations are to be counted (whether the universe is defined by jurisdiction over events, by the territory of jurisdiction, or by special qualifications regarding the population of a jurisdiction).

The nature and boundaries of the universe within which white-collar violations are to be counted is problematic for a uniform reporting system. Problems arise as to whether all offenses that are violations under American law and their offenders and victims shall be included or whether some shall be excluded and whether the violations of the laws of other countries by American citizens and their organizations shall be included. A universe of law violation can be defined in terms of a number of combinations of legal jurisdiction, their resident and non-resident populations, and the place of occurrence of events, where these are germane.

Sources of Variability: Organization of Statistical Reporting

Requirement 6: That there be provisions obligating agencies to report information about white-collar violations in ways that permit its merging from different sources.

The kind and quality of information available on white-collar law violations will depend upon the way in which the collection, processing, and dissemination of information is organized within a federal statistical system.

The accessibility of information as public information and the organization of aggregate reporting systems within federal agencies pose limitations on statistical reporting. Most agencies not only have statutory protections against public disclosure of uniquely identifiable information, unless disclosure is mandated, but they also have statutory protections in most cases against sharing uniquely identifiable information with other agencies. Although the sole interest in statistical reporting lies in aggregated information rather than in unique cases, unique identification of information is essential if one is to merge information about the same individuals or organizations across agencies. It is not necessary that such identification be public information, only that each agency be obligated to share information about the same individuals and organizations so that careers may be tracked.

Requirement 7: That provision be made for central coordination of the processing and reporting of information and for control to insure uniformity and compliance.

At the present time it is impossible to know about all of the specific sources of information on white-collar crime within the executive branch of our federal government. This is so for a number of reasons.

- 1) there is no central information system for all executive departments and agencies.
- 2) there is no exhaustive catalogue or guide to federal statistical reports.
- 3) within any department, and even within some large bureaus, there is no uniform way of organizing data collection nor is there always central responsibility for collecting, storing, and reporting information.
- 4) even within a given agencies or bureau, there can be considerable difficulty in controlling the kind and quantity of information that is collected and in gaining access to it because the collection of data and its aggregation are decentralized to regional or local offices.

Requirement 8: That relevant violations of law, regulations, or standards be systematically and regularly reported by each and every agency, whether or not it has a mandate for law enforcement, regulation, or adjudication.

The availability of information on white-collar law violations differs among the myriad federal agencies and divisions within departments because of considerable variation in the specification of their mandates and of their powers to enforce the law or to regulate and adjudicate matters relating to white-collar violations.

Requirement 9: Although a uniform system of statistical reporting does not require that all agencies follow the same rules for deciding referrals, it does require that there be explicit criteria for defining referrals and their sources so that referral information can be merged among agencies and their sources of variability investigated.

Each federal agency and many department divisions are sources of referral to other agencies of white-collar violations of law. This is particularly true of referral for criminal prosecution, but it often holds for civil matters as well. Each agency is an agent for the mobilization of legal intervention into matters, but the bases for, and the criteria of referral vary considerably among them.

Requirement 10: That there be provision for standardization among agencies of data collection, analysis and reporting.

That each agency has considerable autonomy to develop its information system presents formidable barriers to collation of information on cases transferred among independent or administratively separate agencies.

Requirement 11: Within each network of related information systems cohorts or synthetic cohorts should be created for stock and flow statistics and to identify successive violations by the same violators.

Much of the information on white-collar violations of law arises in connection with the enforcement and regulatory activities of departments, agencies, and quasi-official agencies of the Executive Branch. Inasmuch as criminal matters can be prosecuted only by the Attorney General and the U.S. Attorneys of the Department of Justice, it is possible to have uniform statistical reporting for all matters that agencies decide are to be referred to the U.S. Attorneys or to the Department for treatment as suspected crimes. But, the collection and recording of information on criminal referrals is quite loosely organized at the present time, owing both to the relative autonomy of the U.S. Attorneys and to the absence of central coordination of statistical effort within the Department of Justice. The creation of the Bureau of Justice Statistics within the U.S. Department of Justice may eventually lead to more uniformity. Currently, the Criminal Division of the Department of Justice is attempting to secure information on every fraud referred by any federal department or agency to a United States Attorney's Office, the Criminal Division, Federal Bureau of Investigation, or another part of the Department of Justice for prosecution or further investigation, but these matters are not as yet classified in any uniform way. Although the Department may categorize matters referred to it, it has no authority over these cases prior to their referral. The question as to what is to be referred as a criminal matter rests, therefore, with each individual department or agency, and the staff of the Criminal Division staff or U.S. Attorneys have discretion to reject such matters when referred.

Access to Information

An initial problem in accessing information is to learn what exists, in what form, and with what categories that may be merged with information from other data systems. Most agencies do not have a central index of all the information they collect and compile on statistical reporting that makes them readily accessible to retrieval. The published agency directories, listings, and reference guides all are limited

in coverage and scope although most agencies have internal indexes that are available on request under FOIA. Still there often are raw data and unpublished reports which are not included in internal indexes and these ordinarily can be obtained only by acquiring information on them from informal sources.

Once information is located, gaining access to it may be difficult and time-consuming for persons outside the agency, particularly for anyone outside of government. Unique identification may need to be removed from computer files and privileged materials screened from case files. Although requests for information ordinarily must be met by giving access to it within 10 business days under FOIA, agency budgets for clerical or paralegal assistance often make for much longer delays.

Whether or not one can gain access to information depends also upon retention schedules for information. Government records, including data tapes and their source materials, may be stored by an agency but most are stored by the National Archives and Records Service (NARS) of GSA. Some, but by no means all, computer files are stored by the Machine Readable Archives Division (MRAD) of NARS. Whether or not the information is accessible there depends in part upon whether it is an agency or a GSA "record".

Assuming that one can gain access to the computer files of given agencies, it is almost impossible to identify cases that are common to more than one file, to merge information from several sources, or to eliminate duplicate cases. These difficulties stem initially from the lack of common identifying information that might provide a basis for matching case records.

When one gains access to the files of an agency, they often are not comparable across time periods because changes are frequently made in file structure, the classification of information, and the way that matters are accessioned or counted. For these reasons, it may be difficult to create a time series from the information files.

Problems of matching and merging are compounded if one seeks to track cases across agencies.

There is a special class of documents that are of particular value to statistical reporting systems and whose existence investigators have found it difficult to learn about or to access once their existence is known. These documents are reports on the quality of information in the system and on the nature and efficiency of its operations. Such materials run the gamut from memoranda on law enforcement strategies and tactics to highly technical treatments on the selection of an audit sample. Such

reports are invaluable in understanding changes in a time series and for assessing the accuracy of information on which it is based. For some agencies, a major source of statistical series is reports based upon audits or sample surveys and reporting systems. It is especially difficult to merge information from audits and surveys as they currently exist because they either are utilized only for quality control in a system or because they serve as a proactive means of detecting or monitoring special kinds of violations, ones that are not easily merged with conventional forms of white-collar violations.

Such of major problems of access and use of agency information sources to create statistical time-series on white-collar enforcement actions suggest a number of ways that one might increase the utility of agency information systems for this purpose. These ways are stated below in the form of recommendations for the creation of a federal system to develop statistical indicators of white-collar crime.

1. A special Sourcebook on White-Collar Violations of Law should be prepared annually.

2. Each agency should be responsible for assembling historical series on white-collar enforcement actions and for both continuing and augmenting such a series annually. There should be interagency agreements on a common substance and form for such reporting.

3. Current retention schedules for information produced by agencies should be reviewed to insure that basic statistical sources with respect to white-collar violations are preserved until a permanent system of statistical reporting on white-collar law-breaking can be established.

4. The Machine Readable Archives Division (MRAD) of NARS should set standards for retention of computer files that have information relevant to the development of white-collar crime indicators.

5. MRAD should prepare public use tapes (with unique identifiers deleted) for information files relevant to white-collar law violation, including, when possible, merging information from files before unique identifiers are deleted.

6. At the present time, only certain computer files are retained by MRAD. There should be central archiving of agency information relevant to white-collar violations either within MRAD or some division of NARS.

7. Whether or not central archiving is achieved, there should be a Directory of Information that lists all relevant information sources on white-collar law violations (both machine readable and documentary). Such a directory should include a listing of all materials that are supplementary to or relevant to interpreting or using the primary sources on white-collar violations. Finally, information should be given on whether or not public access is possible and, if so, under what conditions.

8. Within the directory (or apart from it) there should be a listing of all reports that are relevant to understanding the structure of any statistical indicators on white-collar law-breaking and of how the indicators are developed and their quality monitored.

Secular Changes Affecting Statistical Reporting in Official Systems

Any statistical series on violations of law is subject to considerable change resulting from changes in legislation. Legislation, i.e., statutory provisions, can affect a series directly, while the legislative process may affect it indirectly. There are at least eight major ways that legislation can directly affect a statistical time series:

1. Changes in substantive legal mandates;
2. Changes in sanctioning mandates;
3. Changes in procedural requirements of law enforcement;
4. Changes in agency jurisdiction;
5. Changes in the organization of enforcement through consolidation of functions or powers;
6. Changes in the number of enforcement agents;
7. Changes in reporting requirements;
8. Changes in organizational power to sanction violators.

The Congress also can exert considerable indirect influence on statistical series on law violation. The major means of doing so are through investigations by GAO and the work of its oversight committees.

Perhaps the most pervasive influences on variability in statistical time series stem from internal administrative changes in enforcement policies and practices and in the

organization of statistical information systems. There are at least four major ways that an agency can effect the production of white-collar law enforcement indicators by administrative changes:

1. Alteration in policies of enforcement, particularly in the exercise of discretion;
2. Shifts in the allocation of resources among types of enforcement or to enforcement activities;
3. Alteration in the structure of information systems;
4. Changes in what is collected and reported, and changes in its content.

Extra-agency administrative changes also affect statistical reporting systems. They do so primarily by interagency agreement or by executive reorganization. The current system of fraud reporting to the Criminal Division of the U. S. Department of Justice is an example of centralized reporting by interagency agreement. Most main line federal agencies have had some changes in statistical reporting as a consequence of administrative reorganization in the past two decades.

Learning About White-Collar Law Violations Not Detected or Reported to Law Enforcement or Regulatory Agencies

There are a number of different ways that an organization may increase its pool of information on white-collar law-breaking. Among the main ones are those that increase the size of the universe of potential law breaking, that increase feed-in from unofficial or external sources, that use alternative procedures for detecting information, or that take advantage of known properties to estimate unknown ones.

A major alternative to official reporting systems is the sample survey. One way that sample surveys currently are used as alternatives to official reporting systems is for determining the accuracy of information. The Taxpayer Compliance Measurement Program (TCMP) of IRS samples filed returns to estimate errors in the reporting of tax liabilities. IRS also uses surveys to determine levels of compliance with the legal requirements of filing a tax return. The sample survey can be used as an alternative to official reporting systems for determining rates of victimization, of violation, and of violators in white-collar law-breaking. At the present time no such surveys have been systematically developed but analogues are available in self-report surveys of victimization and

offending for ordinary crimes. There are a number of distinct limits to transferring survey technology to the estimation of white-collar victimization, however.

1. For many types of offenses that might be classified as white-collar violations, the victim often is unaware of the victimization and therefore cannot report it.

2. The problem of ascertaining victimization is especially difficult when the victim is an organization. The main reason for this is that organizational intelligence on victimization itself depends upon a socially organized system for becoming aware of victimization.

3. Some white-collar violations do not define a victim, since they are crimes of consent among perpetrators, none of whom is clearly identifiable as a victim.

4. Victimization events are not always easy to identify from victim reports. It is not clear that victim reports can always be related to "same" or "common" events that led to the victimization.

5. The definition of white-collar law-breaking proposed in this report makes it difficult to classify victimizations as white-collar unless the victim has information on the offender, i.e., to qualify as a white-collar violation, it must be known whether a position of power was used to commit the violation and whether it was for illegal gain.

There also are limitations on the use of self-reporting of violations in perpetrator surveys of white-collar law-breaking. Self-reports of compliance or violations of law are applicable in the white-collar area primarily in those kinds of violation where an individual is a lone offender or at most involved in small group offenses where co-conspirators or co-offenders are readily identifiable and known in terms of their role in the event. Where offending partners are more diffuse and the behavior involves complex organizational activity, the perpetrator survey seems less appropriate, particularly to estimate frequencies of violation events.

The dark figure of crime may be more substantial for white-collar than ordinary crime precisely because more attention is directed to cloaking the occurrence of white-collar than ordinary crimes. Most ordinary crimes are point-in-time events and violators have little opportunity to take steps to cover their offense once it has been committed. But some forms of white-collar crime, as Katz (1979) observes, are characterized by elaborate forms of violator behavior to avoid detection. Perpetrators structure the occurrence of the violation so as to make it

difficult to detect its occurrence and, if detected, to determine who committed the crime. These built in forms of deception and disguise may also operate in the survey.

It is no also simple matter to devise sampling strategies for surveys of white-collar law-breaking. Where organizations are the group to be sampled, one is faced with the fact that few sampling frames exist for organizations and area probability sampling frames do not lend themselves readily to sample selection of organizations. Since the probability of many white-collar events is very low, very large samples may be necessary to detect many forms of white-collar law violation. The sample survey thus may be limited to estimating only highly frequent types of law-breaking, e.g., consumer fraud, deception on income tax returns, or housing violations.

Uses and Needs for Data on White-Collar Violations of Law

There is some question about whether it is worthwhile to develop statistical series on white-collar law-breaking. Skepticism is expressed over their value, given controversy over Uniform Crime Reporting in the United States. The difficulties in making cross-section estimates with a reasonable degree of accuracy is commonly used to challenge the legitimacy of any time series of which they form a part. Some of the argument for developing and reporting statistical series on white-collar violations of law follows.

Engineering, Intelligence, Enlightenment Functions of Statistics

There unfortunately is no simple way to identify the current or potential demand for over-time series on white-collar violations of law. All statistics, however, may serve intelligence, enlightenment, and engineering functions, though they more commonly serve enlightenment than engineering functions (Biderman, 1970:225). Each of these models governs the production of some kinds of statistics on white-collar crime.

Engineering models. The engineering model is most clearly being pursued in the development of prevention and detection strategies for white-collar crime, though with manipulative rather than adaptive strategies in mind. A number of Inspector General's offices are developing models to prevent losses due to fraud, dishonesty, and management. Such models attempt to analyze the results of past audits, investigations, and other detection strategies to identify vulnerabilities in program operations, policies, and management that are conducive to waste (DOL, 1979:4). The information developed in these models ordinarily is organized as a feedback process and used to alter program

operations. The effects of these management changes are continuously monitored for their effects and for feedback. The emphasis in these models clearly falls upon taking actions to prevent violations rather than simply to monitor and report them.

A second class of engineering models is designed to increase levels of compliance in a regulatory system. The model usually programs a strategy for isolating the major components producing undesired effects (or in crude versions simply of the kind and level of effects whose causes are presumed) and then for taking and monitoring actions to change the level of compliance. Pollution control models and those for monitoring environmental health and safety fall into this category. Perhaps among the most sophisticated of these is the NEISS system designed to detect unsafe products, determine the source of their harm, and providing for compliance by altering the conditions producing harm.

Models also have been developed for state as well as national programs to detect potential fraud by means of computer aided detection systems (Lange and Bowers, 1979:67-71). Computer detection strategies often become the basis for further investigation to determine the nature and extent of violation.

Intelligence Models. More common are the simpler adaptive management models that rely upon the statistical information systems to provide intelligence to which management can adapt. There are several major models of this kind. The first are designed to produce information to govern the nature and kinds of audits an agency will conduct to increase the pay-offs in its detection or investigation strategies. IRS's use of TCMP and the development of DIF, a formula to select returns for audit is a case in point. The second class of models is designed to estimate manpower needs within the organization using stock and flow models. The information system commonly is used to demonstrate that current resources are sufficiently productive so as to warrant their increase in future budgets to raise the total return.

Enlightenment Models. The statistical information of any agency may provide a great deal of enlightenment information even when not designed with research objectives in mind. Recent research on white-collar crime is based on over-time information from regulatory agencies (Shapiro, 1980; Scott, 1980). An example of enlightenment using statistical information generated for other purposes is provided in a report giving estimates of income unreported on individual income tax returns prepared by the staff of the Internal Revenue Service (1979). Though the information sources were generally deficient, some estimates of total

"unreported income" from illegal activities was made by using estimates of the volume of illegal drug traffic in 1977 prepared for the National Narcotic Intelligence Committee; information from the FBI and from state and local police departments was used to derive estimates for gambling and prostitution.

Needs and Priorities for Information. Users will vary considerably in their needs and priorities for information. Management information systems generally want quite specific and timely data so that daily, weekly, monthly, and quarterly information is required. Where the information is used to detect noncompliance, the information is required in a highly disaggregated form.

Although administrators have some use for aggregated and summary indicators in the white-collar crime area, they are more likely to want to projections that affect their request for resources. They are apt to wish these to be disaggregated for operating units of the organization to show different levels of demand and supply within the organization.

The requirement for summary social indicators is more generally a matter for enlightening the general public or special interest groups which monitor social change. These highly aggregated indicators, whether of violating or offending, are of use also for more sophisticated projections of change in the society and as enlightening for policy makers.

Research investigators, like managers, often demand highly detailed information. Unlike administrators, however, their demand is less immediate and they are more likely to be interested in having information comparable over time. Research investigators also are more likely to require information on the accuracy of figures provided by an agency.

The Organization of Statistical Reporting on White-Collar Law-Breaking

General models underlie statistical reporting systems. Systematic attention to developing the statistical reporting capabilities of such models will enhance the usefulness of the statistics collected, utilized, and reported and increase the prospects for a uniform system of statistical information on white-collar law violation.

Social Control Models

There are general frameworks and special theories of social control that are particularly relevant to the development of statistical information systems on law enforcement and regulation. These frameworks and theories underlie much of the rhetoric and practice of law enforcement and regulatory management. They also afford descriptions and explanations of the social control of illegal behavior for models of social control that can usefully organize statistical information systems, such as the following:

Mobilization of Law Enforcement. A major concern of law enforcement and regulatory agencies is to assess the adequacy of their efforts to detect violations of law. How an organization comes to know about law violation depends upon its mobilization strategies to detect violations in its environment. The organization can rely primarily upon agents who are outside of it and who are not under its control to bring matters to its attention. Only then does it react to these matters by investigation and other forms of resource mobilization (reactive mobilization). An organization also may seek out violations in that environment by organizing its own modes of detection (proactive mobilization).

Proactive and reactive strategies of mobilization pertain to both internal and external environments of an organization, i.e., there are both internal and external environments and internal and external intelligence capabilities related to these environments. Any organization also is to some degree permeable by other organizations. It lies in the environment of other organizations and information about it is available to them. Any organization, moreover, can become an object of information for some specialized organization whose function it is to audit or monitor a class of organizations. Although penetration of an organization's information system may be required by law, as in an IRS tax audit, some may be acquired by private information systems, as in credit ratings.

Figure 1, below, portrays an archetypical regulatory enforcement agency for detecting violations in the internal and external environment of the organization. It divides mobilization strategies of a regulatory agency into four major types by relating proactive and reactive strategies to the organization's internal and external environments, although quite commonly a regulatory agency will use both. Agencies usually separate internal from external affairs, but some also include both.

FIGURE 1
ARCHETYPICAL REGULATORY ENFORCEMENT
AGENCY FOR DETECTING VIOLATIONS

MOBILIZATION STRATEGIES	ENVIRONMENT	
	INTERNAL	EXTERNAL
PROACTIVE	Internal AUDITS of organizational records, practices, etc.-- usually designated Audits	Reporting requirements submitted by agencies Self-reporting of violations required Audits
	Internal Inspections by monitors, tests, etc.	Monitoring systems to detect violations Inspection systems to detect violations
REACTIVE	Investigation of complaints arising internally and externally on personnel	Complaint investigation procedures on external referrals under agency mandate
	Referral for criminal prosecution	Referral for criminal prosecution

Deterrence Models. Surprisingly little is known from statistics or formal experiment about how white-collar offending may be deterred by the imposition of sanctions or by other means of regulating conduct. The major interest in the deterrent properties of law has lain in examining the effect of criminal sanctions upon ordinary criminal behavior. The effect of criminal sanctions on white-collar offending has been neglected on the whole and almost no attention has been given to the deterrent properties of regulation. Most of the interest in deterrence in white-collar violations of law pertains to specific rather than general deterrence. Almost no regulatory or law enforcement agency responsible for white-collar compliance or violations of law has developed a strong interest in deterrence models.

The model in Figure 1, above, makes apparent that regulatory agencies normally do not investigate the general deterrent effects of regulation even though the intent of most regulation is, precisely, general deterrence, primarily because they fail to develop system-wide statistical information on the behavior that is being regulated. Stated

more generally, tests of the general deterrent effects of sanctions or regulatory actions require information on the behavior of persons or organizations in a defined and known universe. No test of the effect of sanctions on members of a population who have not previously violated is possible unless one has rates over-time for offending on all members of that population or a sample of it, with respect to the conduct being regulated or sanctioned.

Despite suggestions that offenders of high socioeconomic status, particularly those who commit white-collar offenses, are more likely to be deterred by negative sanctions than are persons of low socioeconomic status, no law enforcement, adjudication, or regulatory agency models behavior to track the effects of sanctions systematically. Far more interest has focused upon whether there are status disparities in sanctions.

The files of most law enforcement and regulatory agencies are not organized in ways that make possible tracking over time persons or organizations who have been investigated or sanctioned by the agency. The SEC, for example, tracks neither individuals nor organizations over time, so that it cannot determine the specific effects of its sanctions. To be sure, it is no simple matter to track organizations, since the same group of individuals may create a "new" organization following the sanctioning of an "old" one, and individual groups of associated persons appear and reappear in different organizational guises. Yet difficulties in tracking either persons or organizations do not seem to account for the failure of regulatory or enforcement agencies to track unique persons or organizations. Rather, the answer seems to lie in what kinds of measures are chosen to evaluate the effectiveness of an agency. These usually turn out to be measures of volume of cases handled and kinds of sanctions given, rather than measures of the effect of actions or sanctions.

Incapacitative Effects of Sanctions. The effect of sanctions on organizations is of special interest where the forms of punishment involve incapacitation. One commonly encounters statistical indicators of incapacitation using data on sentencing of white-collar offenders. But it is rare to encounter measures of incapacitation for organizations or of the general and special deterrent effects of incapacitating organizations, despite the possession by many agencies of considerable powers to incapacitate organizations.

Sanctioning Effects of Acts of Regulation. It is noteworthy that general and specific deterrence models usually focus on the effects of penalties on behavior. Yet acts of regulating may themselves have important general and specific deterrent effects. Among the more powerful are

audits of records kept. Others pertain to the necessity to keep certain kinds of records and to report regularly, including in some cases to report violations. The NRC, for example, requires extensive record keeping and voluntary reporting of violations of safety standards. SEC requires that each corporation file Form 10K annually, a form that records information on legal proceedings against the corporation.

Compliance vs. Law Enforcement-Justice Models. Law enforcement or justice models are dominated by the detection and investigation of violations with offenders being subject to penalties in the form of punishments or losses. Compliance models are dominated by regulatory activity designed to produce behavior that conforms to rules or standards. The report explores some implications of these twin models for the production of statistical information on white-collar law violation.

Enforcement-Oriented Agencies. Law enforcement and justice systems are built around the detection of violations, their investigation, and their adjudication. Statistical information attaches to the "case" investigated, since it is the "case" that is tracked rather than individuals or organizations in some career or continuing sense. When an investigation is "closed" for any reason, it tends to leave the information system. Whether or not provision is made for cross-referencing to such "closed" cases at some later date may be a quite arbitrary matter in an agency's information system.

There are five major consequences that flow from this disjunctiveness in the processing of information about the same case:

First, little attention is given to information that might explain behavior, rather than how particular decision was made under the law.

Second, the organizations are linked in a network rather than by systemic properties. As a consequence, one obtains statistical information on the "stocks" of cases in any one of the organizations at a point in time. Indeed, one cannot always obtain information on stocks in all organizations at the same point in time. Correlatively, since cases are not followed across organizations, it usually is impossible to obtain information on the flow of cases through such a system. A stock-flow model of cases, persons, organizations (or any other unit) through a law enforcement-justice network thus is impossible.

Third, because each agency does not share much information with any other in the system, there is a great deal of "missing information" on matters that are not

immediately relevant to a decision and considerable disagreement as to the "facts" where the same information is presumably reported. This means both that the information for any given agency is of questionable and unknown accuracy and that across agency comparisons will produce different distributions and results for what is presumed to be a common caseload.

Fourth, the organizational disjunctiveness in processing cases which precludes information on the flow of cases across organizations makes it impossible to analyze law enforcement and adjudication by cohort models. The disjunctiveness in counts and the inaccuracies in information likewise make the stock data sufficiently arbitrary so that synthetic cohorts often cannot be constructed reliably.

Finally, the high amount of discretion permitted in the system, particularly in the matter of criminal referrals and their processing, makes it difficult to compare the nature of criminal conduct across different agencies.

Compliance-Oriented Agencies

A substantial number of federal agencies are oriented almost exclusively toward a compliance model of behavior. The goal of the regulatory organization will be to produce compliance, particularly where the commodity is a critical resource or a form of consumption in the society. Sanctions will be used only as a last resort. Normally time will be granted to correct or modify conditions to achieve compliance.

The structure of compliance information systems has a number of consequences for statistical information on compliance.

First, the compliance regulatory agency will have a set of standards and measures of compliance rather than a discrete measure of violation. These are likely to be continuous measures or interval measures so that one can determine levels of compliance. Noncompliance or violation will be some point on a scale, repeated measures of a given value, or some pattern of scale values. This often means that an agency can talk about levels of compliance, e.g., levels of water or atmospheric pollution, the risk of harm, as in the likelihood of side-effects, or a certified quality, as in the quality of food products such as meats or produce. A measure for determining compliance ordinarily is one that regulated parties can measure independent of any activity on the part of the regulating agency. Indeed, an agency may be held responsible for continuing monitoring or

measuring and to report regularly to the regulatory agency. Noncompliance similarly need not be synonymous with a discrete state, and there can be levels of noncompliance.

Second, the agency normally will have a continuing record of the state of compliance at intervals of time. This means that the agency tracks the unit that is to be in compliance and produces individual over-time measures.

Third, measures ordinarily will be kept on every unit expected to be in compliance (or at least a probability sample of them) so that detection of noncompliance or violation does not depend upon these matters being brought specifically to the attention of the regulatory agency (though the agency may delegate the record keeping to the regulated unit and hold it responsible only for reporting noncompliance; normally such records must be accessible as intelligence to the agency, however, and there are legal requirements for their retention and certification).

Fourth, the agency will develop measures relating to the induction of compliance, e.g., of the length of time required to achieve compliance. Such measures are quite different from those relating to the length of time between various stages prior to the imposition of sanctions and are not readily merged with such statistics. Indeed, the statistical accounting systems of compliance agencies may introduce new concepts such as "recalls" of products that were to be "brought into compliance" and the level of response indicating the product was brought into compliance. Thus a compliance measure may be related to a measure of a condition of violation that is to be brought into compliance.

Fifth, the agency may develop a framework to determine the rate of compliance in its domain of regulation.

A statistical reporting system based on compliance models then will produce rather different statistics from those based on law enforcement or penalty models. Each compliance oriented agency normally will produce some information on law violation as well as on compliant behavior. This latter information can be merged in some way with that for all basic law enforcement agencies. However, compliance agencies will produce information on white-collar law-abidingness as well as on white-collar violations of law.

Prevention-of-Offending Models. Perhaps the least common of all models used in the social control of white-collar law violations are those built around preventing violations of law. Such models differ rather radically from the others previously described. Prevention models are closely tied to causal theories of the behavior that they

and causal models use to predict law violation. The object of preventive social control is to intervene in a causal sequence to change behavior.

Prevention models are emerging in Inspector General programs where there is a responsibility "to prevent and control fraud, waste and abuse" in federal program funding and administration. These prevention models are usually rather crude. They are based on the premise that the causes of violation, when manipulated, will prevent the behavior from occurring. But it is not necessarily true that manipulating the causes of an event will be the optimal strategy for producing a change in the occurrence of that class of events.

This class of prevention models focuses on variables that are amenable to strategic intervention by the agency or its agents. The class of variables that best fits this description is opportunities for offending. Hence, prevention models tend to produce information on such opportunities.

Somewhat more sophisticated prevention models based on organizational exchanges or networks are being developed to assess the structural and transaction points in government benefit programs that are vulnerable to fraud and abuse. One such model has been developed by Lange and her coworkers (1979). When modeling the transactions that occur within government benefit programs, four categories of major offenders emerge: (1) the administrators who are charged with managing the programs; (2) the recipients who directly receive program benefits; (3) third party providers who provide the benefits or services; (4) auxiliary providers who offer goods and services to their parties and administrators.

Detailed examination of the transactions that give rise to offending leads to the identification of vulnerable transaction points in the exchange network in archetypical government benefit programs. These include especially (1) the application for benefits; (2) the administrative determination of eligibility; (3) the provision of services; and (4) the payment of government funds to third party and auxiliary providers. Specific offenses tend to be associated with transaction points, and their costs can be estimated. The application for benefits, for instance, produces recipient offenses of misrepresenting eligibility and changes in eligibility status. The provision of payments, for example, leads to offenses of misrepresenting costs by providers and over- and under-payments by government employees.

The utility of any social control model ordinarily is no better than the assumptions that underlie it. Each of the models that we have examined makes certain assumptions about endogenous and exogenous variables in the model and about the nature of causality in producing law violations or about the causal effect of interventions in behavior sequences. These assumptions must be examined as to their plausibility and validity and the implications of assumptions in each model specified clearly in terms of their potential effects.

Deterrence models of the effect of sanctions on crime rates, for example, are vulnerable to identification restrictions that take the form of a prior assumption about the behavior of a simultaneous relationship between crimes and sanctions. The National Research Council Panel on Research on Deterrent and Incapacitative Effects, for example, took great care to examine the deterrent effect of sanctions using both simultaneous and nonsimultaneous models (Blumstein, et. al., 1978:25-42).

Some of the more serious limitations of these models also lie in their assumptions about what are the possible kinds of behavior open to explanation and, therefore, of the kinds of violations that can occur in regulated or enforceable conduct. The example of an IRS study is used in our report to point up the importance of model assumptions in estimating the extent of violation or of harm done by violations. Attention often focuses on the difficulties of actually measuring extent and losses for defined sources, ignoring the possibility that the model excludes other sources that could substantially affect conclusions reached. This kind of limitation is inherent in the design of studies that attempt to achieve an overall measure of "illegal behavior," such as in the Clinard and Yaeger (1979) study of "illegal corporate behavior." Though the authors are careful to call attention to the fact that they included actions against corporations only from 24 federal agencies, excluding all state and local violations, and that their sources varied in the extent of their coverage, little attention was given to how these limits affect all estimates and the prediction of violation. Clearly, a corporation's violation profile can change substantially with changes by inclusion or exclusion of forms of violation.

There similarly are important ways that the choice of social control strategies of law enforcement, prosecution, and regulation affect statistical information on white-collar law violation. Mail fraud often is charged because it is easy to assemble evidence of it and, therefore, there is a greater likelihood of conviction on the charge. Many frauds involving securities, for example, will be prosecuted as mail or telephone fraud rather than as violations of securities laws per se. Similarly, prosecutions against

persons in organized crime may take the form of income tax evasion by showing that illegal income was not reported for tax purposes. A "white-collar" rather than an "organized crime" thus is "created."

Mathematical, Statistical, and Data Collection Models

Apart from the substantive models that guide and control the development of statistical information systems on white-collar law-breaking, mathematical, statistical and data collection models come to dominate the collection and collation of information on white-collar delicts.

The advent of electronic data processing has enormously facilitated access to information and increased its public use. This increased access may mean that more and more such systems will be constrained by their use by the public as well as by management.

A second consequence of technological information systems is that data tapes come to substitute for files rich in their diversity and complexity. As tapes increasingly substitute for such files by categorizing and massaging information, they solidify it in ways that reduce its utility for multiple purposes. Moreover, the existence of data tapes permits the destruction of original data sources. The history of the future may be written with data tapes rather than original source materials. Hence, our information will represent an even more standardized and bureaucratized view of public transactions than is now the case.

Finally, the creation of electronic data systems has raised the spectre of social control by information processing. By making matching and merging of diverse sources of information possible they have created on the one hand a tool for detection of white-collar violations and their management in control systems. On the other hand, new data systems have made possible greater understanding of the causes and consequences of violating. The strains and tensions these capabilities produce in the social control of the information are not inconsiderable, and will continue to have consequences for who can know what about white-collar delicts.

Apart from the effects of technology on information systems, certain statistical data models are increasingly used to collect and analyze information. These include the rapid adoption of the sample survey as a means of data collection and econometric models for analyzing data, particularly by regression techniques. Here we call attention to the fact that such models are not without their assumptions and limits in regard to knowing what should

become matters for investigation. In general, the impression is that such models, despite their limitations (or in some cases because of them), lend considerable power to the analyses of white-collar offending. They are particularly important for operational as well as for informational purposes. Yet their application raises questions about who gets regulated how. Stratified probability sampling models not only are powerful in determining risks, but also in selecting units for observation as to their violation status. In themselves, risks do not specify either harms (safety, for example) or the cost of being selected as against the cost of being omitted from a given selection. These issues of value underlie the use of such models and deserve explicit recognition and attention.

Barriers to the Collation of Information on White-Collar Law-Breaking

There are a number of different kinds and sources of barriers to the collation of information on white-collar law-breaking. Some of these, such as the form of information systems, are structural barriers. Others derive from procedures for classifying and processing information and relate mainly to the lack of standardization of information or to imprecision in measurement. Finally, some derive from the fact that the information system for any agency may have unique or historical sources of variability that make merging their information with that from other sources problematic.

Basic File and Reporting Structure. Although agents develop information on a case basis, the basic information file may take rather different forms. Files may be structured for aggregate reporting of information as of a point in time, for the aggregation of information about cases at a point in time, or for the aggregation of information about cases over time. As one moves from the collection and reporting of information on an aggregated case basis to one of reporting information more or less continuously over time, the kinds of statistical reporting that are possible are enhanced. Moreover, if one wishes to merge information across all agencies, the possibilities for merger are limited by the nature of the file structure.

There are rather substantial limitations on merging information from files where the basic unit is an aggregation of information (or a summary). First, it is impossible to assess the accuracy of reported information, except by resort to field audits of each inspector's reporting. More importantly, additional information that is not included in the aggregate reporting becomes inaccessible to the central information system. One cannot relate one variable to any other unless it is provided for in the

statistical reporting form. Possibilities for inquiry using the information in the files thus is limited to the original aggregate form of reporting. Finally, and most important from the standpoint of collating information across agencies, if the object is to merge information for all units, the form of aggregate reporting sets the limit on what can be merged. One cannot merge information for any greater level of detail or for any relationship that is not provided for in the aggregate reporting form. Moreover, since such aggregate forms are rarely standardized across agencies, aggregate reporting by agencies virtually precludes merging much, if any, information across agencies. The capacity to do so will be in considerable measure dependent on broader developments in federal statistical organization and policy. Systematic national white-collar offending and compliance statistics can come into being to the degree that there is realization of the concept of a federal statistical system transcending the complex organizational division of responsibilities for administration and action in the field among a multitude of offices and agencies. The availability of information for such a system and the quality of that information as data for statistics will depend upon the extent to which that system is successful in diffusing through government the orientations, the models, the norms and the practices of the statistical institution.

ORGANIZATIONAL SOURCES OF TIME-SERIES VARIABILITY

Apart from the effect that the structure of information systems has on uniformity in statistical reporting of white-collar law-breaking, the ways that each agency organizes its data collection and reporting and the ways that its environment affects the quantity and quality of information on law violations are also barriers to uniformity.

Collection and Classification of Information

The ways that each agency organizes the collection and classification of information for electronic processing creates barriers to collation of information by how it determines units of data collection, organizes information into records, and provides for its accessioning and updating.

The File Record. To retrieve information from an electronic information system, ways must be found to define information in a record and give it a unique identity or set of identities. Record systems also vary in how information is stored and retrieved, e.g., information can be arranged hierarchically or in a horizontal structure only. All of

these properties of storing and retrieving information affect the extent to which it can be made comparable across agencies.

Multiple Counting of Basic Reporting Units. A basic problem in collating information from different reporting sources is that one runs the risk of counting the same information or unit of measurement more than once.

Basic Units for Records. Closely related to the problem of multiple counting of records of the same event is what bit or item of information is to constitute the basic unit to which information is attached in the information system. The basic unit ordinarily will comprise the principal unit of count, although having a basic unit for compiling information as a single record in no way precludes tracking information for different units of count within the same or different records.

In defining records, there is no single recognized unit that pertains to organizing information about white-collar violations of law. It is well recognized in dealing with law violations that one must distinguish among such concepts as the violation (or crime) event, violators, violations (whether of counts, indictments, legal code designations, cases, and related designations), victims, or other matters related to occurrences. Indeed, other units for organizing information may be the agency's intervention that leads to the definition of a violation, such as an "inspection," "investigation" or "report" or that represents the initiation of some line of action, such as a "case filing" or "an administrative hearing."

Information files are not usually organized around basic units of interest in learning about white-collar violations, violators, and victims. The choice of a basic unit around which the record is structured has other and important implications for the derivation of information from it. One may be unable to track certain kinds of information in a file precisely because of the way information is organized with respect to a basic unit.

Other Units of Count. Some other problems relate to the effects that choice of basic units of counting in a record have upon the collation of information.

First, it is no simple matter to treat all matters as discrete events in their counting. Some matters are continuing violations in some sense, though they may be treated as discrete events in an information file. EPA water pollution data provides an example. A permittee may be emitting pollutant on a more or less continuing basis, and there may be monitors detecting that pollution. Each record in some sense is an event and a violation can be

charged for it; yet in another sense they are continuing events. Indeed, one can have as many violations as there are measures of the same continuing event.

This problem relates to a central issue of how events are to be defined and measured as violations, given indeterminacy in their timing and discreteness or patterning in offending. This is no simple classification and counting matter for any major type of law violation, but it is a particularly intractable one in defining matters as white-collar law violations or in defining organized crime violations.

How many violations shall be counted depends not only upon whether one takes repeated measures of the same continuing event but upon whether a continuing pattern of behavior is made up of many discrete events over time, each of which can be treated as a violation. The problem is an especially difficult one where one is counting violations committed by organizations or of individuals and organizations in some organized transaction network.

Second, the problem of merging counts of violations from different agencies is exacerbated when different violations from different agency sources are merged together in a summary measure of violation.

A third problem is that counts of violations by and against organizations cannot be separated in file structures from counts by and against individuals. It is impossible then to choose a rational base for the calculation of statistics. The failure of most file structures to separate individual and organizational units moreover systematically remains one of the most serious obstacles to the development of a rational set of indicators of white-collar offending or to use these files to test hypotheses or theories about white-collar law violation.

Completeness of Records. A perennial problem in the development and keeping of records is their accuracy in the sense of the completeness of the information for any record or unit of it. It is commonplace to observe that information is lacking on a given characteristic in a given percentage of cases. How complete the information is for any given variable in an information system depends very much upon some official definition of that item of information as essential for some purpose of management or work routine. Routine actions of agencies such as "filing charges," "opening" an investigation and "closing" it, and similar activities tend toward 100 percent completion in an information system, while the occupational position of an offender will have a considerable proportion of "unknown." Where information may be relevant only to a limited group of staff within an organization, e.g., a nonoperating division

responsible for planning or research, or where it is regarded as useful only under limited circumstances, much less attention will be given by the data collectors and data processors to insuring that the item is recorded in each instance.

It turns out to be the case unfortunately that the variables on which information is most likely to be missing are those that explain behavior or conditions of violating. Commonly missing is information on the background characteristics of victims or offenders or of circumstances surrounding the event that are not immediately germane to the management of a case. This lack of completeness poses serious problems in using official information systems to test theories about law violation.

One may have difficulty also in locating information to verify case counts or locating cases listed in an official inventory of cases. Both problems can be serious ones when one is working with original case files where many factors affect the storage and retrieval of files. Discrepancies between actual and expected counts are not uncommon both in statistical reporting and in checking files against docket listings.

Updating Records. How a file system provides for update of its records may have a substantial effect on what can be learned about causal sequences, whether sequences explaining the behavior of white-collar offenders or of the legal agents in their roles as decision makers. Updating systems which replace records make sequential analysis more complex and less definitive. This is partly due to the fact that the status of any record at any point in time depends upon the rate at which agents produce information to update them. But it also is due to the fact that the rate at which units behave determines their updating; the more active a unit, the more frequently it is updated in a continuous updating system. Each of these sources produces differences in the updating status of aggregated records at any point in time. Even cross-section comparisons, therefore, using an updated file can produce misleading results, since case attributes are weighted disproportionately by the rate of updating. The reported results may reflect neither the actual status of an aggregate of cases at a point in time nor the elapsed time between status at different points in time.

How an updating system is organized can have a substantial impact on the status of information in a file. Whereas in the U.S. Attorneys' file the clerks attached to local offices are responsible for updating, there reportedly is considerable difference in the rate such offices report update information to the central office and of how accurate and consistent are updating practices. Moreover, the

central office for the U.S. Attorneys' data information system has a schedule for encouraging updates by local offices, but its efforts are not always successful. Record systems then may distort timing in sequences or even sequences of events if there are bureaucratic lags in updating, whether or not updating is by replacement or by continuous record.

Retention of Information and Its Accessibility. It would be a time consuming matter to document what files of information are generated in each government department, program, or agency that are relevant to the development of information on white-collar violations of law. Their number could easily be several hundred. Such a task, however, might usefully be performed so that investigators might be made aware of the nature of each data base and its accessibility to public use. This would be no simple matter if detailed information is provided as to availability of coding manuals, the nature of the file structure, and changes in them over time documented. That task was beyond the scope of this project.

What is apparent from our examination of data files is that considerable effort must be expended to gain access to information from any file that has relevance to white-collar law violation. Almost no file is currently available as a public use tape. Indeed, very few are prepared for use outside the agency. Normally they include unique identifiers. Considerable time will be expended, therefore, in gaining access to tapes that may be used by individual investigators. Attention might well be given to the preparation of public use tapes.

What is also surprising is that most agencies have not developed retention schedules for information in their case files or for data tape files. Clearly, there is no standard schedule for such matters nor for their archiving. Since any substantial effort to reconstruct time series for past periods depends either upon gathering information from case files or from data tapes, it seems essential that attention be given to the retention of these major information systems until some determination is made of their utility for statistical series on white-collar law violations. Needless to say, the preservation of data tapes by themselves is insufficient; provision must also be made for access to all documentation relevant to their use.

Access to information is complicated by the location of information sources and of the expertise on them. While many of the major systems are located in Washington, D.C., some are not. It is not easy to learn about information systems that are widely dispersed in space or to gain ready access to them in a way that makes them usable. Many information bases, moreover, are generated in local or

regional offices and the original case file resides in those offices. This disposal of data collection requires some evaluation of the local production of national statistical systems--a matter deserving of attention in one or more special studies. Such studies are of both theoretical and methodological interest. One can investigate theoretical hypotheses about how systems that enforce, regulate, and sanction white-collar law violations vary by local organization. One can also investigate how local organization affects the accuracy of information.

Classification of Violations. The collation of violations depends in important ways upon how one defines violations and classifies them by type of law violation. Of special interest is whether one can use current legal classifications of law violation (or of crimes) in collating matters as white-collar law violations and whether current systems of agency classification and reporting are sufficiently standardized so as to permit collation of violations from different sources.

Examination of conventional legal classifications of violations of law makes problematic whether the kinds of violations defined at law and for which counts are conventionally made can be treated as white-collar violations, as distinct from political, organized or ordinary offenses. Nowhere is this more apparent, perhaps, than in reporting for legal categories of crime that are often regarded as "white-collar crimes," e.g., forgery, bribery, or fraud--though the problem exists for any type of crime.

One way to deal with the problem of heterogeneity and ambiguity in most conventional legal violation categories is to do sample studies of classification of events to determine the relative proportions each type of crime constitutes for each class of law-violation. These proportions then might be used to allocate matters to the desired classification scheme's categories.

Assessing Accuracy

Attention must be given to the accuracy or reliability of any information that is to be used in testing theories or developing social indicators of white-collar violations of law. In addition to assessing the completeness of information in a statistical system, some of the other problems of accuracy that must be addressed are these: how accurate is the information on each information bit in a system? Do information systems vary in the kind and amount of inaccuracy in the information they produce and what characteristics of the agency or of its information system affect the accuracy of information and its statistical reporting? What kinds of inconsistencies typically occur in

information items? Are there means of assessing the accuracy of information both internal to and independent of the agency producing it? What are the possibilities for separating error in producing information from deliberate distortion and bias in the information? And finally, what kinds of inaccuracy characterize time series data for an agency reporting time series?

Effect of External Sources

Time series on white-collar violations of law are of interest both as social indicators of social change and to test hypotheses about the violation of law under changing conditions. Up until this point attention has focused primarily on how each particular information system causes variation in the production of time series and on the effects this variation may have on collation of series. Yet any statistical information system also is affected by actions taken outside of it. These externally produced effects are not uniformly causal for all series nor can one take the effects into account in some common calculus.

Firstly, external sources of variability often are discrete and unique events that have point-in-time effects for a given agency. Legislative acts, for example, ordinarily affect only one or a few agencies. An act, for instance, might increase the number and kind of matters an agency may treat as violations. Where those mandates were taken from some other agency, one would look for effects in both agencies' data but legislation also may be "new law" defining "new violations" and one could not derive any measure of what might be expected by way of its effect on statistical counts. The measurement and interpretation of these effects is difficult enough for any single agency's series but it becomes particularly difficult to take such diverse discrete sources into account when time series are merged, e.g., a time series on fraud based on reports from some 40 or 50 different agencies.

Secondly, each statistical information system is poorly organized to gather information on external changes that may have an effect on the production of information by the agency and to measure the effect. It may be simple enough to keep track of legislative changes or directives from OMB, more difficult to define and pinpoint major policy changes and measure them, and exceptionally hard to gather information on changes in opportunity or behavior systems that can affect the production of information. The same kind of information is produced by a number of different agencies, but there is no central agency that has information for each agency's statistical information system that makes it possible to merge or collate the series.

Thirdly, the sources of change in statistical series are often the result of several interrelated changes. A legislative change also tends to produce administrative changes which in turn may produce changes in the way information is categorized and processed.

Fourthly, we have noted earlier that the contribution of any external source to the behavior of systems may change over time. Its effects may be delayed, altered by later changes, or occur only at an immediate point of implementation. Keeping track of other than immediate effects on a time series is a complex and often an impossible attainment. An examination of FDA legislation (Heaviside, 1979) suggests that most legislative effects on statistics are delayed by some period of time during which the legislation is translated into standards or rules that must be promulgated. There are subsequent delays in allocating enforcement staff to detecting violations of new rules or in including their detection in current enforcement practices. It is almost axiomatic that no agency carefully documents these changes so that one can relate them to changes in statistical reporting in the same time dimensions. This is so for a number of reasons, but most particularly for the same reason that evaluation studies often limit their criterion variable to outcome measures--there are few established and quantitative ways to measure changes in social processes. Measuring organizational change is essential if its effects on the production of information are to be assessed in any reasonably precise way. Lacking ways to handle this matter, we must recognize that our efforts to look at changes in violation behavior over time will depend in part upon our capacity to discover and measure these external sources of variability.

Finally, we should point out that there does not exist any theory or model of sources of variability in the production of information on law violations. One is left primarily with an ad hoc assessment of these possible sources of change over time for each producer of information.

Understanding changes in rates of violation for white-collar delicts requires, then, two types of explanatory theories. First, we must have theories about what causes changes in the behavior that is defined as a violation of law. And second, we must have theories about what causes change in the behavior of the law itself and how it comes through social organization to define, process, and report matters as law violations. Each type of theory must define both endogenous and exogenous sources of variation to explain changes. These types of theories provide a basis for searching for exogenous sources of variation in law violation rates and of matters related to them. Where one searches for such explanation is considered briefly.

Where there are marked changes from one year to the next--particularly where such changes reflect a return to a status quo--and where there is any sharp change which then stabilizes or proceeds at a much slower rate, one ordinarily would look for an explanation in the behavior of organizations in defining and reporting matters as violations of law. Correlatively, where such changes are more regular and systematic, one might seek the explanations either in causes of changes in violation behavior or in opportunities for it and its detection.

This strategy for seeking explanations rests in presumptions about the two types of causal theory; one addressed to gradual, diffuse systemic change, the other to more abrupt concentrated organized systematic change. Theories about what causes persons to be deviant or violate the law, (i.e., behavior theories), ordinarily select and utilize explanatory variables that do not behave in an erratic fashion from year to year--though such fluctuations are more characteristic of opportunity than of other types of deviance causal theories. Correspondingly, theories about organizational behavior often select explanatory variables where discrete--even short-run changes--many have a considerable impact. This is characteristic of some labeling theories of deviance, but it is particularly characteristic of administrative theories of organizational behavior. This is not too surprising in that administrative theories focus upon variables that can be manipulated by administrators to bring about changes in organizational behavior. In the same way, theories about the exercise of discretion applicable to legislative, executive, and judicial behavior in defining and deciding matters permit of explanations for short-run and seemingly erratic changes in a time series.

Examination of barriers to the collection and collation of information on white-collar law-breaking and of exogenous effects on the statistical series generated by any regulatory or law enforcement agency makes all too evident that statistical information has a life course or history. Individual statistics or time series are born, change as the agency changes and as changes in their environment affect them, and then often disappear or die.

Examples of how new statistical reporting systems are born abound, and many have been mentioned in this report. But the form that statistical systems may eventually take is not necessarily set by the acts that may lead to their eventual creation. The recent legislation creating Inspector General offices in all civil departments, for example, mandated reporting requirements and thereby gave birth to a spate of semiannual reports from each of these agencies on their efforts to cope with fraud and abuse and with employee violations and complaints. Though the

Congress established a mandate for semiannual reporting on these matters, no provision was originally made for statistical reporting or for any uniformity in such reporting. As a consequence the reports lack comparability. For these reasons, many of the current statistics that are reported by a given agency will disappear and new ones will emerge as reporting objectives develop and change.

Because of the "newness" of this reporting requirement, little attention seems to have been given to the creation of time series. Although occasional comparison is made with previous six month or annual periods, there are as yet no obvious instances of the birth of statistical series on fraud or abuse or of employee violations or their complaints--only a birth of discrete measures or "statistics."

Histories of Agencies as Histories of Statistical Measures. For the most part, the life course of any statistical measure is tied to its life course within a particular agency. Because of this intimate tie between the parent agency and the statistic or series, no instance was found in which statistics or information systems are transferred in any way that assures their continued reporting when an agency is merged with another or the law transfers responsibility for enforcement or regulation from one agency to another. Indeed, even the reorganization of an agency can have substantial effects on a statistical series.

Regeneration and Rebirth of Statistical Series. Given the close and intimate tie between an information system of an agency and the agency's operations, it is difficult to transfer information. The cost of moving information to another agency when a function or responsibility for a program is transferred rarely is provided for in the reorganization of agencies or the transfer of their function. Statistical series and statistics, therefore, often die when an agency's functions are transferred to another or when it is absorbed by another agency. The demand for certain kinds of information is sufficiently strong, nevertheless, so that the new agency or the new home for an old function begins to generate the same or similar information. This regeneration of statistics would not be a serious matter were it not for the fact that the information lacks the comparability essential to its incorporation in a statistical series or for comparisons over time.

Structural Provision for Assessing the Accuracy of Information. There are a number of ways that enforcement and regulatory agencies provide for checks into the accuracy of the information collected and processed. Among them are the use of training and of supervision or monitoring designed to increase personnel motivation and skills to

produce reliable information. There are also structural and procedural means for increasing accuracy, such as standardizing classifications and reducing discretion in classification. We give immediate attention here, however, to formal provisions an agency may make for assessing the accuracy or reliability--and occasionally the validity--of the information it collects, processes, and reports and for deriving specific measures of accuracy or error by these means. Such assessments of accuracy and the measures obtained from them are critical elements in determining to what use the information may be put.

While administrative records are generated as by-products of normal agency functioning, audits normally are deliberate attempts to produce information about something further concerning the agency's behavior, or of its relationship to some environment. We call the ways that an agency provides for assessments or measures of the accuracy of information a form of audit. Just as there are audits designed to detect violations or to determine compliance with standards, so there are audits to assess the accuracy of the information collected, processed, and reported. We examine five major forms. Audits may proceed by: (1) varying the independence of the auditor; (2) varying the independence of the means of auditing; (3) varying the independence of the source of the information; (4) repetition of the same procedures; and (5) by analytic statistical methods.

Technological Change

The development of technology and technique for dealing with information has been a fundamental source of change in every aspect of statistics pertinent to our present topic. There is no need here to discuss elaborately how the development of computer technology has revolutionized the field. This includes the elaboration of software not only for doing various conventional operations with data but also for extending practice to embrace new treatments and uses of data that were not previously even entertained. It includes also extensive developments in the field of statistics. At the present juncture, the rapidity of the development of information technology is also so great that the problems are largely one of adoption rather than innovation. Agency statistical practice generally lags far behind the state of the relevant arts.

Nonetheless, the rate of adoption of new information technology has become unprecedentedly rapid and technological change is perhaps the major source of effects on the data of interest here. Phrases such as "The Information Society," "The Information Economy" and "The Information Revolution" have become bromidic characterizations of the contemporary world. Since the very

effort on which we embarked here is one small part of the developments that lead to such phrases, it would be incongruous for us to belittle them. The transformation of the roles of information in society is what brings projects such as the present one into being. The difficulties it confronts in realizing its purpose stem from the proliferation of data on the topic of interest, the greater importance attached to the utilization of systematic data, and the lags of social and cultural adjustment to "The Information Evolution."

Throughout this report, attention is called to grave defects of organization, procedure, and conception that make of scant value for any statistical use much, indeed most, of the mountains of data on white-collar violations that are collected by the federal government. We also identify many unexploited opportunities for developing useful statistical series. This may lead readers of this report to conclude that our orientation is hopelessly unrealistic, for to act on our explicit and implicit recommendations may seem to require both multiplying the federal fiscal deficit and revolutionary reorganization of modes of operations. In truth, we ourselves see scant early prospect of substantial remedy for many of the problems we identify or realization of many of the ideal objectives we posit. Nonetheless, we do not regard the present work as an ideal, utopian exercise. Many of the kind of improvements recommended here are not nearly as costly as they appear to be and, to the contrary, would involve, properly reckoned in cost-benefit terms, major economies over present practices.

One of the central problems of adaptations to "The Information Economy" is that economic concepts, formal and popular, that have origins in a "meat and potatoes" economy are those we are habituated to use. Those concepts are severely strained in application to information, generally, and more particularly, to information in the public sector. We have extremely poor tools for establishing values for either the costs or benefits of information, although it is generally believed, perhaps erroneously, that it is easier to establish costs than benefits. (See National Academy of Sciences, National Research Council, Setting Statistical Priorities, 1978, for a partially contrary view.) Information is not inclined to behave as do many other "commodities." Externalities abound. Indeed, more cost usually is external than internalized in a large part of all the kinds of statistical activities under consideration. Curves of marginal cost, of demand, or of most other functions slope in unaccustomedly perverse directions for application of conventional economic models. The special economic characteristics of information also form one reason why the suggestions made here may be less utopian than they appear. For example, price index change in the information technology area in recent years has been moving as radically

downward as general price indexes have been moving upward. We would venture the more radical proposition that there is an extensive degree of spuriousness to measures of inflation (and of investment and productivity) in that the measures used are not geared for taking into proper account the extensive shifts toward information as both input and output of economic activity. [This example, incidentally illustrates (a) the high dependence of our society upon statistical information; (b) the high cost that may be associated with bad information; (c) the difficulty of assigning quantitative values to the cost/benefit ratios of statistical information of broad social import.

That the values of information are not visible to many systems of economic accounting does not make them totally invisible to all processes of social decision. The impetus toward change and investment in improved information is quite intense. Although criteria for linking the values of information to those of general economic valuation are tenuous, the internal criteria of information systems are fairly clear and establish their own imperatives: these are criteria such as truth and falsity, accuracy and inaccuracy, reliability and unreliability, systematic or random bias, and fit or lack of fit, sampling efficiency and inefficiency, and many others. At the same time, the technology, hard and soft, for pursuing these imperatives ever more efficiently grow apace. Change in statistical sources is endemic.

Social Control by Social Indicators

Statistics are important for social control because they inform, enlighten, and engineer decisions. In the nature of the case, however, no statistical information exists except in terms of some socially organized way of knowing. "Concepts, definitions, quantitative models, and theories must be adjusted to the fact that the data are not some objectively observable universe of 'criminal acts' but rather those events defined, captured and processed as such by some institutional mechanism" (Biderman and Reiss, 1967:1). The potential power of information depends substantially upon those who produce it and upon their modes of production.

The potential power of statistical information affects both its production and its use. Statistics arise as information not only in the process of exercising social control but also to exert control. Any attempt to develop a general system of indicators of white-collar law violation must bear in mind that such a system must depend in large measure for the foreseeable future on data collection by agencies of social control. Yet it would be unwise to neglect the fact that quite often the control of the information lies with the controlled rather than the

controllers. Any general system hence must also take into account how those who are controlled or regulated affect the quantity and quality of information.

The capacity of original producers to control the quantity and quality of information necessary to regulation or law enforcement is a powerful influence on what matters may be treated as white-collar violations in the data system.

Although such control of information lies with all violators, it is especially critical in the matter of white-collar violations of law (and for that matter for organized crime also) since an essential element in these violations is the use of a position of power to violate the law. Frequently that position of power gives the individual great leverage to control not only knowledge about the violation but access to information that would facilitate its detection.

Production of Information by Agencies of Social Control. There is enormous diversity in the kind of information that is relevant to the control of white-collar violations of law. The only constraint upon each enforcement agency has been that the final adjudication of matters as criminal violations of law lies with the system of prosecution and adjudication in the federal courts. Until quite recently, no attempt had been made to develop even the semblance of a uniform reporting system on white-collar law violations comparable to that developed for uniform reporting of ordinary crimes.

This lack of uniformity and the range of discretion is reflected in the annual reports of federal regulatory and enforcement agencies that deal with matters of relevance to white-collar violations of law. Until quite recently, few, if any, agencies explicitly recognized the problematic nature of counting violations. Agencies generally provide information only on raw counts without any reference to a statistical base for their reporting. The simple production of raw counts in statistical reporting on white-collar violations of law reflects an inattention to the use of statistical information for other than particular and immediate objectives of the agency. As we have noted before, the statistical information systems of federal agencies often reflect an older concern with justifying the agencies' mission or mandate and a newer concern for systems management. A first concern is ordinarily reflected in statistics about caseloads and manpower relative to the raw magnitude of the problem; a newer concern is with information that facilitates case management.

There is yet another reason why statistical indicators and their reporting have been less consequential for social control in federal regulation and enforcement of white-collar law-breaking. Regulatory agencies are largely dominated by lawyers and by legal interests. Statistical matters are considered to be largely items of information for administering the agency rather than for informing the application of law. Lawyers tend to be interested primarily in cases and case law rather than in statistical aggregates of cases. They seek to report change as accomplishment or progress with particulars rather than in terms of cases more generally considered. They choose to report the unique or precedent setting case. We have been struck with how frequently agencies report synopses or digests of cases rather than statistical data and analyses to illustrate their accomplishment or account for their activity.

Perhaps the most serious difficulty confronted in attempting to use current information systems for classifying and counting white-collar violations of law is that they do not provide information in a way that conforms to the type of definition of them proposed within this report. Taking the criminal justice and regulatory systems of information as they exist, the definition of white-collar law-breaking proposed cannot be applied to the data of most agencies. As such, the concept does not lend itself to easy operationalization for some particular research on which someone may currently wish to embark or for the development of statistical indicators on white-collar law-breaking.

The original agency records of some agencies, to be sure, may provide sufficient detail so that information could be classified under our definition of white-collar law breaking. But the fact that most agencies classify information either in terms of legal statutory categories of law-breaking or in terms of their administrative criteria for defining and processing cases means that the information in their statistical data processing systems will not lend itself to the suggested classification.

The proposed definition can prove to be operational in a comprehensive way only if it can gain broad acceptance with the government and if it comes to influence the manner in which record systems are constructed and managed. But these record systems cannot be independent of the manner in which the agencies whose transactions they reflect conduct their business. And that business, in turn, must be conducted in accordance with the law. The proposed definition, or any other, therefore, will prove useful only to the degree that its conceptual structure is found usefully coherent and lends orientation both to law and to its administration.

Another reason for the modest role of statistical information in the control of white-collar violations is that little is known about how penalties relate to measures of recidivism since we lack appropriate measures of recidivism and penalties in a career. In particular, were one to compare different penalties allotted to offenders in comparable violations for their deterrent properties we would have to take into account the differences in detecting violations because any subsequent penalty depends very much upon capacities to detect violation. Where the risk of detection is low, recidivism rates should be higher than where the risk of detection is high. It is quite possible that not only is it difficult to detect white-collar violations and build a case (Katz, 1979) but that detection alters considerably any possibilities for engaging in that conduct in the future. Simple properties that flow from public or private knowledge and alter opportunities are major sources of effect wherever position is used to commit violations. Hence, in white-collar violations, it may be that more detection of violation causes changes in position which are more critical than the nature of the penalties in causing specific deterrent effects.

Finally, it is difficult to link information on penalties to general deterrence.

Measuring Variations in Law Violations or Measuring Responses to Them

There have been two opposing positions historically in the measurement of crime, designated the institutional and the realist perspectives by Biderman and Reiss (1967:2). The institutional perspective argues that crime can be known only in terms of organized, legitimate social responses to it, i.e., a crime cannot be validly known to have taken place until some legal agency authorized to make a determination has done so. (In legal theory, this institutional perspective is dominated by the approach of "legal realism.") The "realist perspective" holds that crimes are events with an independent existence in time and space; the problem is to find some means of detecting these actual occurrences. Biderman and Reiss note, however, any knowledge of events depends upon socially organized ways of knowing whether they occur. The institutionalist-realist controversy in the field of crime statistics thus must be viewed from the perspective of comparing socially organized ways of knowing. Conceptually and empirically, the records of individual events themselves are products of socially organized means of perceiving, defining, evaluating, recording, and organizing information.

Perhaps the central issue at the outset in measuring white-collar law breaking is whether one shall rely primarily or solely on measures that are developed by the

socially organized systems for responding to white-collar law breaking--the data developed by detection, mobilization, investigative, settlement, adjudicative, and sanctioning systems--or whether we shall attempt to measure white-collar law violations independent of these response systems. We do not consider this an either/or choice since in the long run any system of social indicators or of research on law breaking would necessarily take both kinds of measures into account.

By way of beginning, it would seem quite obvious that, short of massive new data gathering strategies, one is dependent upon data collected by organized social response systems, particularly those of our several levels of government (we have relied mainly upon data from the Federal system with only occasional reference to cases from State and local systems). There currently is no organized system of data collection that regularly and systematically collects information on white-collar law breaking independent of government information systems. Newspapers occasionally detect and report violations independent of government sources, but their reporting of white-collar law-breaking depends for the most part upon their own initiative, assignment schedule, and priorities.

Despite this current dependence upon official government information systems, it is useful to examine some ways that independent means of data collection might alter conclusions about white-collar law breaking based on government response systems as well reveal the problems encountered in defining and classifying events as white-collar law-breaking by means independent of governmentally organized response systems.

A first and fundamental issue separating the institutional and realist perspectives on defining and classifying matters as white-collar law-breaking is how one separates legal from illegal matters. A strict institutionalist position relies upon defining "illegal" behavior by the socially organized responses (laws, rules, and orders) and the processes for determining whether particular matters fall under them (those of law enforcement and settlement of matters).

A second and closely related issue is what are the alternative processes to formal determinations by legally constituted processing systems and what are their limits? Here we face several issues of how one can classify and allocate events or behavior to legal categories. How can one operationalize the law independent of the legal and organizational processes created for its operationalization?

A third related issue is how can one relate independently developed systems of information on white-collar law-breaking to legal categories of law-breaking such as fraud, antitrust, or conspiracy?

Legal Criteria for Classifying and Counting Matters as Violations

A first and most obvious way in which the application of legal criteria to events complicates classification and counting of white-collar law violations is that a whole series of events may be treated either separately or as a single event by applying some of the same and some different legal criteria to them.

The second way is that many of the same matters could be treated by more than a single charge. Thus legal strategies of evidence and proof can affect classification of the same events or set of events into two or more different classes.

A third way is that there is no defined or known limit to the charges that might be placed with respect to the same or to relatively similar.

A fourth way is that complex events involving multiple parties may give rise to additional charges as a consequence of differences in the response of parties to the "legal events," e.g., a charge of obstructing justice or one of being involved in the same behavior with yet another set of offenders.

A fifth way is that just as concepts applied to defining the law violation can vary so the matter of penalties, of defendants, and of any other way that we might wish to classify these "cases" can vary.

There is a sixth, though closely related, source of complication when legal criteria and concepts are used to define events. White-collar law violations cannot be classified meaningfully without resort to institutional and organizational criteria, particularly those related to organized legal systems.

A seventh source of complication when legal criteria are used to conceptualize matters is that both the elements of the class and their constituent subclasses change considerably over time. Though the basic definition may seem to remain reasonably standard in some instances, the creation of new subclasses alters substantially what is conceptualized, measured, and counted in the more general class.

An eighth source of complication is variation in classifying matters due to differences among statutes in limits they set to the right of civil action or of the sovereign right to criminal prosecution. Where there are statutes of limitations, they can have considerable effect both on conceptualizing specific violations of law, as well as on whether or not a particular action will be brought or prosecution undertaken.

A ninth source of complication is the extent to which legal criteria are specified in technical as contrasted with discretionary terms. Several consequences follow from the use of technical criteria in statutes, particularly the specification of a technical standard. There is far greater agreement about violation where standards are technical rather than discretionary.

The Elements of a Classification System

Before examining systematically some of the ways that conceptualization of the elements in a classification system of white-collar law-violations relates to their counting, it may be helpful to indicate just how important conceptual issues are in classification and counting under the definition of a white-collar law violation. The definition depends upon a conceptual element, the "use of a position of power" to commit the violation. The requirements that the offending party be identified, that that party's position of power be identified, and that it be linked to the gain or consequences resulting from a law violation are constraints upon related concepts and affect the counting of matters as white-collar law violations.

We cannot count any occurrence as a white-collar law violation unless there is some information about, or information that permits inference regarding, an offending party's position of power and its use; wherever that information is lacking either because the information was not obtained or more usually because no such information can be attached to known instances of law-breaking, there shall be an underestimation of the count. At the same time, we cannot develop a satisfactory concept of "white-collar offenses known to law enforcement" since many may be known only as part of that more inclusive class of "offenses known to the police" or to other law enforcement agents. Many offenses that meet legal criteria as law violations will not be counted because of the way the system of detecting offenses operates, rather than because of the system of detecting offenders. In that sense, our counting--though not our definition--of white-collar law violations depends upon institutional and organizational processes of detecting events, gathering information about them, and processing that information.

Several consequences follow from the use of a definition with the requirements ours sets for knowledge about the offending parties and their acts:

A first consequence is that we cannot separate among major types of offending. We cannot, for example, separate an ordinary from a white-collar offense as the definition of both will depend upon knowledge of the position of the offending party in the event.

A second effect is that the classification of offenses into subclasses may depend upon knowing an offender's status or position in an event.

A third result is that, without any criterion to distinguish among violations unless the offender or the offender's position in the event is known, we cannot conceptualize or count white-collar law violations simply in terms of properties that attach to the behavior of violating or its consequences.

A fourth consequence is that the definition of an attempted offense is especially problematic in white-collar law-breaking. Where the definition of the offense depends upon establishing intent and where intent, in turn, depends upon knowledge of the offender or where the definition of an event depends upon knowledge of an offender, we shall have difficulty determining white-collar violations as "attempts to commit" that violation. Indeed, for many white-collar law violation, we work primarily in the realm of "actual events" and their counts, since our conceptualization limits us to "actual" occurrences.

A second major issue relating conceptualization to counting is the matter of developing a logical classification scheme for conceptualizing types of white-collar violations. The law itself has only rudimentary logical subclasses of violations and these are most apparent in the criminal law. We have been unable to find any particularly compelling logic behind any contemporary scheme for classifying white-collar law violations. The law itself provides no criteria that specify white-collar law violations or subclasses of them. A main problem in developing a classification system that when there are not criteria for determining the inclusiveness or exclusiveness of any class, the choice of classes is arbitrary.

Issues and Problems in Measuring and Counting

There are two central issues in measuring and counting. The first is, what are the units for counting and how shall one count them? The second is, what are the appropriate bases for comparing and reporting counts?

What to Count. One of the more difficult problems in deciding what to count about violation events is to decide upon what events and what properties of events are salient. This is no simple matter as events are constituted from other properties or events and once constituted can be regarded as having other properties, such as time and space, as well as properties that define them as events. Events also have component parts that may be salient for separate counting, all of which have their own properties that can be conceptualized and counted separately. Abstractly, there are victims and violators for events and there are properties that define them. But in addition, there are properties that define relationships among victims, violators, and violations. The relationship between a victim and a violator may have been contractual, for example, and it is some failure to comply with the law governing the contract relationship that constitutes the violation. Whether or not we shall choose to count types of relationships in a classification and counting system will depend upon our goals, but certainly they are an element that may be of considerable importance for a variety of purposes.

An initial problem that arises is whether one shall count violations as 'events', events that give rise to violations, or violation events.

A second problem arises from the ways that relationships among victims, violators and violations in events determine or bound measures and their measurement. Occurrences will differ considerably in the extent to which the status of victim and violator are significant elements and in the extent to which knowledge about them is forthcoming. Inevitably, in this connection, the problem of what to count is related to the question of how often and how accurately what is to be counted can be counted. Some illustrations again may help in considering the matter.

There is a problem of choosing measures of white-collar law violation given the relationship between violations, victims, and violators.

First, who are the victims of a violation?

Second, there seems to be is no way to define a victim that would cut across all kinds of events, and where an appropriate base could be found. A different base might be required for governments as victims, other kinds of organizations as victims, and for persons as victims.

Third, for some kinds of events the consequences may be a more significant element to measure than the numbers of violations, victims, or violators.

Fourth, events are not easily bounded in duration and space. How, then, shall one bound the definition of events, and their violations, victims, and violators, so that counts may be made?

Fifth, implicit in much conceptualization and measurement is the question of whether seriousness shall enter (a) as an element in selecting and defining a particular measure, (b) as a criterion in bounding a measure, and (c) in determining choices about which violations are to be taken as measures of white-collar violation, either singly or in some index. A determination of the seriousness of an event is related to the way that the perceived and actual consequences of events are regarded as harmful. The incorporation of seriousness into a measure of violation relates also to who is to be regarded as a victim. Whether every member of an exposed population is to be regarded as victimized whether or not they experience any actual damage depends not only upon the law but also upon how one determines harms and their consequences and upon criterion for determining or ranking matters as to their seriousness. The separation of criteria regarding victims from those regarding harms is problematic, conceptually and empirically. How one decides the question of harm will determine who is to be regarded as victim. How one decides who is to be regarded as victim, independent of any criterion of the kind and amount of harm, will determine the measure of harm.

Bounding Events in Time. There are also no simple ways to resolve the question of how to bound in time all white-collar law-breaking events. But one must recognize that different kinds of white-collar law violations will be bounded in time in different ways and that the bounding of events will vary with other conditions, as well, such as how the events are detected, what evidence there is to support a particular violation to the point of sanctioning it, and whether the object of law enforcement is compliance or negative sanctioning. The following propositions are asserted in respect to these variables:

1. The greater the linkage of penalties to the duration of events, the more likely it is the events will be bounded with definite beginning and end points.

2. Detection systems that treat continuous violations as discrete events do not attempt to bound the beginning point for the event but ordinarily treat successive points-in-time as intervals for measuring whether or not the process has continued or terminated.

3. Given the legal difficulty of establishing a pattern of continuing violation over definite periods of time, the law will opt for related point-in-time events in the prosecution of matters.

4. The more compliance-oriented the regulatory agency, the more it ignores beginning points and establishes termination points--usually by abatement or some other procedure. Many compliance agencies monitor the deviation of violations only for the time interval between the detection of the violation and the period set for abatement by compliance.

There are a number of other considerations involved in counting victims and violators that relate to how they are bounded in time. The following are offered as hypotheses:

1. Point-in-time events usually have a lower ratio of victims to violators than do ones regarded as episodic or of continuous duration--though that is not invariably the case.

2. The number of violators may on the average be substantially greater for point-in-time and events of short duration than for those of long duration, even where there is conspiracy. Events of long and continuous duration generally require social organization where the violators either typically are organizations or where the person can command considerable organizational resources. Where the violations are episodic, they are more likely to involve persons rather than organizations, but those persons will be linked into some ongoing organized social processes with which their victims are familiar.

3. The more white-collar law violation is of continuous duration, the less likely victims are to be aware of their victimization; hence precise counts of victims are more difficult.

4. In general, the larger the number of victims for any given violation, the less likely one is to have a precise count of their numbers.

5. The longer the duration of an event in time, the more likely it is to be regarded as a series of discrete events with different victims and violators for the discrete events.

Bounding Events in Space. It has been common practice in reporting on crime to calculate victim and violator rates for different territories--ordinarily for areas of data collection such as law enforcement jurisdictions or sampling areas. Territorial bases are chosen for rates for explanatory reasons as well. Size of a place and composition of its population, for example, are thought to

help to "explain" variation in crime rates. The measurement of and explanatory relevance of territory to victimization and violating is more problematic in white-collar law-breaking.

In every case of ordinary crime, thus, we try to document an official place of occurrence of all known or victim-reported events even though the scene of the crime is a moving stage. Where there are many places where a crime episode or event took place, the place of occurrence is officially reported as the place of apprehension of the offender, or the point at which the "most serious" crime occurred, since that is where or how we acquire knowledge of the event "occurring." Many, if not most, white-collar crimes present a quite different situation. The place of occurrence of the event, the residence of the victim, and the residence of the offending parties may have little, if any, relevance to the occurrence of the event. Indeed, there usually is no single place of occurrence for some classes of white-collar crime violations in the sense in which there is a place of occurrence for an ordinary crime. This is so either because there are many places of occurrence (e.g., an instance of consumer fraud due to false advertising), or there is no single point in space to which any aspect of the violation seems germane (e.g., in criminal antitrust).

Perhaps the distinguishing characteristic of at least a very substantial subclass of white-collar crime events is the irrelevance of point-in-space measures. If this is so, then for those types of white-collar crime subnational measures will relate only to the processing of events and the residence of offenders or of victims, but not to the event itself. The detection of such events, moreover, may often be divorced from any relationship to a place of occurrence.

The place of residence of violators similarly may be largely irrelevant to offenses. This is especially the case when the violator is an organization, but it may also be so when the violator is a person. The territorial location of organizational violators in consumer fraud or in product safety on the whole is irrelevant to the commission of those violations, though it may be relevant to obtaining compliance or to penalize a violation. Whether the organization is a domestic or foreign corporation may be important for these latter matters. A person's residence ordinarily is of little relevance to the occurrence of whole classes of violations, such as communications frauds, though the more local the medium, the greater its relevance.

Multiple Counts of Events. It is commonplace that in all forms of law violations, an event may involve multiple statutory violations or, in the jargon of criminal

prosecutors, "multiple counts" or charges. To deal with the units of violation as separate legal charges divorces them from their relational context and makes it difficult to treat them analytically as part of the "same occurrence." More importantly, for purposes of social reporting and for analytical studies, the practice links explanation to legal events rather than to their behavioral occurrence. Treating charges as the units has even more serious consequences for analyses than this, however, just as counts of victimizations rather than of incidents have for the explanation of victimization or the determination of risks. For, if one assigns the same explanatory variables for victim and violator to all of the charges involved in an occurrence, one has created an explanatory system divorced from behaving units, such as persons and organizations. For these reasons, it has always seemed important to establish some counting rules that give priority to some particular charge among a set of charges or to develop more general categories of charges that describe the event.

Double Counting of Events. Closely related, but separate from the problems of multiple counts, is double counting. Double counting arises when the same event or violation (or charge) is counted more than once as a separate matter because it is recorded in more than one information system or because it is recorded more than once in the same information system. The problem is a serious matter where one is attempting to estimate incidence of white-collar law-breaking, since it can seriously overestimate the occurrences of events. The problem may seem of importance only in statistical reporting of white-collar law violations. But it can be equally serious in analytical investigations, inasmuch as it gives additional weight to the same explanatory and dependent measures. There is one major source of double counting and that is the multiplicity of systems for detecting, recording, and reporting the same law violation. By the same law violation we mean the same occurrence in time and space insofar as it is phenomenologically the same occurrence.

Separating the Status of Violators from the Characterization of the Violation. One of the rationales for our proposed definition of white-collar law-breaking was that we sought to separate the definition of a violation from the status of the violator.

Procedurally this seems quite possible if we can secure information independent of the law enforcement processing systems, or if we can secure sufficient information from such systems to classify violators by our criteria. Still we cannot control the collection and classification of information all that well, given the way that legal processing systems are organized to define matters. We expect that they pay attention to the "collars" or status

of the persons with whom they deal and sometimes bring legal charges accordingly, but the extent to which they do so is at issue. What may be treated as common theft for an ordinary working class or low status person may easily become a fraud for a middle status individual--solely due to official discretion. The problem may be especially acute where the violator is directly apprehended by the persons who have responsibility for classificatory actions, such as agents in the course of taking law enforcement actions or deciding dispositions. Judges, for example, may be most sensitive to status criteria at the point of sentencing.

White-collar law enforcement agents may be likely to regard violators in the terms of their status. We suspect that the color of the collar of the agent also affects the extent to which there is direct contact between the agents and the violators.

There is another matter in which the status of the violator can affect classification and counting. The higher the status of persons or organizations and the more power they command, the more likely they are to mobilize a defense that affects their classification as violators. In this sense, white-collar law violators clearly have more control over what is classified and counted. All things considered, perhaps the higher the status of the legal processing agent, the more will the status of the violator be taken into account in classifying and disposing of the violation.

Problems in Counting Violators

There are a few major issues that relate to who is to be counted as a violator and problems in counting special types of violators.

Qualifications for Violator Status. What qualifies units for counting as violators depends upon whether one adopts an actor-based classification in which the violators must personally commit violations. By contrast, persons can be considered surrogate actors for organizations, and organizations may be surrogates for still other kinds of violators such as environments.

Counting Organizations as Violators. There is no uniform definition for an organization to which one may have recourse for counting organizations as violators or for defining a potential or actual population of violators. What for legal purposes is a single organization may consist of many different organizations that formerly were legally separate or that had distinct independent forms of organization (e.g., they manufacture very different kinds of products). Just how we might want to classify organizations to develop a system of organizational indicators of white-collar crime requires further inquiry.

Foreign Nationals as Violators. A minor problem that impinges on a count of organizations as violators is whether one includes foreign corporations violating U.S. laws as violators and whether one counts the violations of U.S. domestic corporations in foreign nations as violations that qualify them for violator status.

Offending by Members of Organizations. There are distinct problems regarding how to count violations of members of organizations against the organization and on behalf of it. Studies of employee theft disclose that there are two types. One is employee theft or illegal conversion of the property of an organization, such as in the use of company property for personal gain (e.g., use of the company computer for personal profit). The second is defrauding the organization of the services of oneself or others--an exploitation of the organization in terms of the work due it. In both cases, one is using a position in the organization to accomplish the theft or deception. We would not treat most instances of such offending as fitting our definition of white-collar law-breaking, since they may not involve any particular use of a position of power in the organization.

There is a third kind of employee violation that we have defined as white-collar law-breaking. It occurs when an employee uses a position of power to commit an act for illegal personal or organizational gain. A special subclass of this general category that requires special attention. It involves individuals who offend on behalf of the organization but under expectations from officers of the organization or coercion from them. Offending, in fact, may come to be defined as part of the job--what one is required to do in the course of work. This can be a dilemma for members of an organization, as when accountants or lawyers--the fiduciaries of an organization--are expected to "cover" for it and do so. But it does not appear to be an uncommon feature of organizational roles that members are expected to carry out illegal activities.

Accessories and Pawns in White-Collar Offenses. A neglected problem in white-collar offending is that of persons being accessories to and pawns in white-collar law violations. Very little is known of who becomes and how one becomes an accessory to or a pawn in a white-collar offense. It is assumed that organizations may often involve others as accessories or pawns.

Issues and Problems in Base Rates

Raw Counts and Rates. The choice of whether one is interested in a raw count or some other statistic such as a rate depends very much upon the use one intends for the measure. Raw counts, for example, are of special value to

administrators who allocate manpower and to corrections and court officials who must handle "cases." Indeed administrators of operating agencies generally are usually interested in raw counts for internal management and consider rates only for comparison with external units or to convince others that they meet some criterion, such as efficiency.

Raw counts are of little use for the development and reporting of social indicators. Ordinarily indicators use some statistical measure that summarizes the information in the raw count. The most common of such measures is a rate--the ratio of the raw count to the count for some base population of units. Reiss (1966) observes that for social reporting the problem is "... one of deciding what kinds of rates does it make sense to calculate, given our current knowledge of the causes of crime, the situations under which crimes occur, our aims of public information, our goals in the formation of public policy to deal with crime, and our goals in the development of organizational strategies to reduce crime." Specifying these conditions and obtaining the data to calculate the different rates are major tasks unlikely to be fully satisfied in any investigation of white-collar crimes. Nonetheless, it remains the case that procedures must be developed for establishing base populations for which rates can be calculated. Such bases may be individuals, organizations, transactions, even opportunities. Selecting an appropriate base requires attention to what relate to issues of what different bases for the same count convey about a phenomenon and what distortions result from the selection of one base as contrasted with another. The choice of a base can become a political informational tactic rather than an enlightenment strategy in social reporting.

A White-Collar Law-Breaking Indicator System

Statistics and Research. There are several recurring themes in our consideration of problems, issues, and strategies towards developing a general system of indicators for white-collar law-breaking.

One of these themes is that statistical indicators are an important element in the exercise of social control by any agency, but their development and use are substantially shaped by those same agents of social control. That shaping of indicators must be taken into account not only in understanding social indicators but in using them for tests of substantive theory.

A second theme is that tests of substantive theories are highly dependent upon institutionally organized information systems. The understanding of information systems, thus, is as critical to substantive theory as it is to social reporting.

A third and related theme is that ways of classifying and counting white-collar illegalities, their consequences, and their disposition depend upon causal models, some of which are derived from existing substantive theories about law violation, some of which relate to the social organization of data collection and reporting, and some of which relate to methods of analysis. At the same time--and almost paradoxically--all of these models require the kind of information that information systems provide not only to test but to refine existing models and develop new ones. A critical element in the resolution of that paradox is an understanding of how information is shaped by, and shapes, theoretical models and of how operating systems shape information. Finally, a general theme of this study is that the development of an adequate system is dependent fundamentally upon the infusion into the social organization of data systems the norms, techniques and controls of the scientific profession of statistics. To a considerable degree, most of the information systems we have reviewed have only been peripherally affected by the professionalization of statistics that characterizes government data systems in such areas as economics, health, education and human resources. In most instances, the imperatives of good statistical information, if recognized at all, are subordinated to, and compromised by, priorities accorded immediate operational and administrative purposes. In a few instances, however, the principles developed by statistics as a scholarly discipline, and in research, have achieved routinized application in agency data systems.

Our review of the statistical sources of information on white-collar law-breaking has documented the importance of the social organization of information systems in defining, classifying, and measuring violations of law as well as the structure of violation events and their consequences. We have emphasized repeatedly that only by understanding the organized ways that information on illegalities comes to attention and is collected and processed can we use that information in counting. Clearly any system of social reporting and social indicators must rely heavily upon such understanding of the social organization of information systems and the consequences of such organization.

Substantive Research. The same understanding is important for substantive research on white-collar law-breaking. There are three major reasons why substantive research benefits substantially from research on information processing systems.

Obviously current research on white-collar law-breaking relies almost exclusively upon national level statistics and information developed by Federal executive and regulatory agencies, prosecutors, courts, and corrections. The sophistication and growth of substantive research on white-collar violations of law must proceed with understanding of those statistical information systems and on the detection, mobilization, and processing systems that generate the information. The greater the availability of statistical information on white-collar law violations in public and published forms, and the more accessible that information is in agency information systems, the more rapidly we can develop substantive knowledge on white-collar crime.

Unfortunately, it has been less than obvious to most investigators doing substantive research that the ways in which information is gathered and processed affect considerably the uses to which it can be put. Many conclusions from current research are suspect because of a failure to understand how social organization affected the quality and quantity of information available testing the substantive theory. The example of a work testing substantive theory on detecting illegalities on the SEC discloses how much time and effort might be saved in a given piece of substantive research were one to have more information at the outset on how the information to be used was generated and stored, and if better guidelines were available as to what to look for in the quality of data before they are used analytically.

It is easily lost sight of, moreover, that statistical data illuminate some of the major substantive issues in explaining crime and criminality, and violation of and compliance with law. We have noted that there appear to be substantial differences in the organization of compliance and penalty law enforcement systems. We have tried to show how information is different in these two types of systems, and to indicate how such information illuminates the very nature of those differences. Any program of substantive research must pay attention to the ways that the structure of law enforcement, compliance, and settlement systems require statistical information for their very existence. It is difficult to imagine how such agencies could operate without the basic units that form the core of their information system. At the same time, substantive research using statistical information for those core units may disclose alternative ways of organizing that system and the manner in which it processes information.

Just as it is impossible to imagine a modern law enforcement system--in the broadest sense--operating without statistical information, it is impossible to imagine that one could change it through substantive research without

statistical concepts and information. The very core of evaluation of social programs is statistical information. It is mistaken to assume that one always can or should rely upon statistical information that is developed independently of those information systems to evaluate an agency's programs of change. It must be understood that each source of information is affected by its institutional underpinnings.

Finally, in the long run substantive research must come to depend upon institutionally organized information systems on compliance and enforcement for most of the data to test theories with regard to violation and conformance. No society can afford the massive investments in independent sources of data collection that are required for the test of theory. What is required is that there be a continual interchange between those who develop and those who use information within an agency and those from without who find such information useful in testing theory. Much as economists have relied--perhaps too heavily in some instances--upon institutional sources of information for tests of their theories, so all theories in social science must rely, at least to a substantial degree, upon institutionalized sources of data collection whose major purposes are not scientific. It must be so, if for no other reason than that the scale of information collection and the cost of its processing are prohibitive. We must spend more of our resources to understand the nature of those systems and the effect they have upon the quality of information. No data source is without its sources of error. The more one knows about and understands the sources of inaccuracy in information and can estimate actual amounts of error for each source affecting a body of information, the greater will be the information's utility in testing substantive theory.

We conclude our specific suggestions for research with a general note on strategy and tactics of investigation that returns to our beginning argument. It would be mistaken to assume that the development of the elements of social reporting are somehow adjunctive to the test of substantive theories about white-collar illegalities and their social control. Quite the contrary. Our tests of substantive theories depend in large part upon our understanding and assessment of the systems that generate the information about what we wish to explain and about that which explains, including the bias and accuracy of information. There is no satisfactory logical separation of statistics and research tasks in the testing of theory. Developmental research on statistical reporting should be compatible with tests of substantive theories, including tests of substantive theories about the social organization of knowing about law violations and their disposition.

The statistical systems of large organizations, including government, represent in large measure the technological transfer of concepts and techniques first developed in the world of research and, then, incorporated into the routines of organizational administration and operations. One objective of the various inquiries we propose should be to illuminate this process to help speed it in selective and functional ways so that the routine information from agencies on white collar violations can derive from the scientific enterprise the virtues of accuracy, discrimination, reliability, representativeness, objectivity, conceptual explanatory power and generality at which research methods and theory aim. Agency statistics, however, take much of their character from sources other than scientific methodology and theory, as we have continually emphasized, in that they are products of the particular social organizations that produce them.

Social research in the area of our concern, as in most areas, is, in turn, heavily dependent upon the information-gathering capacity of non-research institutions. Just as the government statistics to which we have attended represent the routinized applications by legal and administrative institutions of elements of the culture of the research world, social research makes routinized (and often as unthinking) application of the statistics of those institutions. Research uses of data require understanding, both general and particular, of how the social organization of information generation affects data. The expanding areas of interpenetration of the worlds of law, administration and social science are deserving of particular attention, for the illumination of those who are actors in each of these worlds or, simultaneously or sequentially, in more than one of them.

I. THINKING ABOUT WHITE-COLLAR CRIME

Edwin Sutherland (1940) coined the concept of white-collar crime for his pioneering studies of corporate violations of law. The concept is an unfortunate one, carrying with it ideological as well as intellectual freight and unnecessarily complicating explanation with description. Thinking about "white-collar crime" is needlessly encumbered by the concepts of both "white-collar" and of "crime." To free the definition from these conceptual constraints, we offer a few major requisites for a definition of what matters are of interest in "white-collar crime." A definition that meets these criteria then is offered and discussed relative to others used in classifying crimes.

Some Major Requirements of Definition

A major problem in using occupation or socioeconomic status as a defining element in crime is that the element cannot be used at the same time as an explanatory characteristic because it is not allowed to vary independent of the definition. Whenever "white-collar" is used as an essential defining characteristic in defining crime events, it is compromised as an explanatory variable. We believe this is a mistaken explanatory strategy because the major theories about what causes crime utilize socioeconomic (vertical) status as an explanatory variable. Our first requirement for a definition then is that occupational or socioeconomic status be excluded as a defining element.

Excluding socioeconomic status ("white-collar") as a defining characteristic likewise helps us to distinguish events from participating statuses in events. What is "crime" should apply insofar as possible to a knowledge of events, not to variable properties of their perpetrators. The kind of behavior we wish to make problematic for explanation, moreover, is perpetrated by both individual and organizational actors. White-collar socioeconomic status is at best a dubious way to characterize organizational actors since organizations typically have complex occupational structures. It seems mistaken to assume that similar behavior on the part of an organization, or involving that organization, can be "white-collar" or "blue-collar" depending upon which members are involved. The printer's behavior in engaging in "insider trading" seems no different from that of the corporate officer who does so since a perpetrator's vertical status is not a necessary condition to commit the illegal act--though their status may have been a factor in how they came to offend. The corporate officer may have perceived the opportunity to use information relevant to the impending stock event in the board room, while the printer saw it in printing the information.

The concept of crime ordinarily carries with it defining elements of culpability and of penal sanctions or a penal code. Crimes are typically contrasted with civil and administrative infractions or violations. Traditional criminal law presented crime as behavior involving a guilty mind or motivation (mens rea) and a guilty act (actus reus). Such behavior required penal sanctions or punishments under the penal code. This view held that persons acting on behalf of corporations could be held criminally responsible only for those unlawful acts in which they participated personally. Without any personal participation they had no liability for the acts of a subordinate.

In American law, these distinctions have been breaking down for some time with emerging doctrines of civil and criminal liability. Moreover, it appears that apart from the structure of the law--whether a civil or a criminal statute--there is little formal basis for distinguishing one kind of behavior from another. There is little justification, for example, for distinguishing civil from criminal fraud on grounds of culpability or seriousness of sanctions. They differ primarily in the standards and procedures by which violations are determined and sanctions are imposed.

Much behavior that is formally the same in terms of its occurrence is legally different only because of the evidentiary problems in classifying actual occurrences under the law. Many offenses become civil cases solely because of the difficulty of proving intent or of assembling evidence to conclude that the activity falls under some criminal provision for holding individuals or organizations culpable. Moreover, the Congress of the United States at times chooses civil or administrative rather than criminal proceedings because of these difficulties and because of the costs of proof and punishment. An interesting example of this is provided in the history of the legislation for the Occupational Health and Safety (OSHA) legislation.

The original drafts of the OSHA legislation provided for both civil and criminal penalties but these bills were rejected in favor of legislation offered by Congressmen Steiger and Daniels that leveled civil sanctions for all substantive violations. In Conference Committee a criminal provision was added where willful violation caused employee death, but otherwise all penalties are civil. The legislative history strongly suggests that the drift to a wholly civil penalty framework for substantive violations of the law was motivated by the objective of keeping the imposition of "criminal penalties" free of the strictures of criminal procedure (Levin, 1977:719). Given the extensive form and use of money penalties in the OSHA legislation, there were conflicting interpretations of the constitutionality of money penalties under the Sixth

Amendment. Subsequent appellate decisions, however, affirm that OSHA's civil penalties are civil in nature. The U. S. Supreme Court has articulated a clearly civil rationale for an identical penalty scheme under the Federal Coal Mine Health and Safety Act of 1969. The matter, however, is by no means fully resolved. During the current term, the U. S. Supreme Court is hearing arguments that can affect enforcement of the Clean Water Act, specifically whether civil penalties imposed on individuals or organizations who report pollution are, in effect, criminal sanctions that violate the individual's protection against self-incrimination. Moreover, in *Dulles v. Trop*, the Court held that matters which carry penalties cannot escape the constitutional requirements for criminal matters simply by declaring them civil matters.

This blurring of distinctions between civil and criminal matters, particularly matters that fall within what has been considered "white-collar crime," give rise to our second requirement--that a definition of white-collar violations of law encompass all behavior where penalties can be imposed, regardless of the form of the proceeding. The form of the proceeding or the legal authority under which the penalty is leveled then can be allowed to vary as a property relative to behavioral violations of law. How matters become treated as "civil" or "criminal," for example, then may be treated as problematic.

Ideally, the categorization of any type of law violation, including classification as crime, should relate logically to other classes of law violation. A third requirement then of any proposed definition is that it logically distinguish white-collar from other major classes of crime or violations of law to which penalties are attached. We shall attempt to distinguish these matters from those in three major classes of crime: ordinary, organized, and political. Though our four-fold classification and the terms adopted for reference are not an optimal selection, we choose to treat them by way of original definition because of their institutionalization in the literature on crime. We shall have occasion to consider other logical classifications later in this report.

Having rejected the implications of both "white-collar" and of "crime" in our definition, the troublesome issue remaining is whether one should continue to refer to these matters as "white-collar crimes." We have no simple answer to that issue of nomenclature. We shall regard "crimes" as matters that fall under the criminal code and are subject to criminal penalties through a criminal proceeding. There are six related and alternative labels that can be attached to the broader category of behavior to which penalties are attached and that include crimes as a subclass. They are: law violations, infractions of law, transgressions of law,

law-breaking, delicts, and offenses. Even more general concepts include misdeed and misconduct, and illicit or actionable conduct. For the most part, we shall use these alternative terms interchangeably, with a preference in the definition for "law violations to which penalties are attached." The term law-breaking (Wallerstein and Wyle, 1947) also commends itself.

The term "white-collar" is more difficult of substitution in a single word or phrase, as our definition will make clear. We have variously considered 'organizational' violations, 'violations of institutional position' or 'misdeeds of power.' But, we have opted finally against neologism and, instead, choose to use the old word "white-collar" in a new sense. We preserve the idea of an institutional position of the criminal actor, but without a specific vertical socioeconomic referent. To the degree that continued use of "white-collar" summons congeries of occupations as characteristic of violators, our choice to remain with the concept is unfortunate.

White-Collar Violations Defined

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

Definitional Elements

The major terms in this definition are defined as follows:

Violations of law includes both acts and omissions (nonfeasance) that are punishable by legal penalty. An action is not a violation unless there is some culpable, i.e., blameworthy, party to the action.

Penalty is the loss, forfeit, or deprivation that may legally be imposed for a violation. The procedure by which the penalty is imposed--administrative, civil, or criminal--is not integral to the definition of penalty and all three types of proceeding may characterize the processing of white-collar violations of law.

Violator may be an individual, a group of individuals, or an organization. There is no presumption that organizational actors must also include individual violators and vice versa.

The legitimate economic or political order includes businesses; government; nonprofit organizations such as charities, foundations, religious organizations, hospitals and universities; political parties; and the organized practice of the "free" professions. Legitimate social organizations are those serving legally permissible, socially accepted purposes. Our definition also includes highly regulated and institutionally structured economic institutions such as securities and commodities markets, real-property holding and exchange, and formal fiducial trusteeship, even when the immediate actors of concern as victims or offenders are private individuals.

Gain includes, in addition to direct pecuniary benefit, the protection or enhancement of opportunities for potential pecuniary benefit and for the avoidance of pecuniary costs or losses, or opportunity costs.

Position is any position within an organization that is being used for illegitimate gain, regardless of the violator's position in the general class structure of society, or any position that an organization or group occupies relative to other organizations or groups.

Influence, power, and trust refer to the command that can be exercised over material resources of an organization, its symbols, its personnel and clients, as well as over its relationships with other organizations or the public, as these enter into the execution of the violation.

Significant power, influence, or trust in a position refers to the magnitude of the degree of control and of the resources of an organization that are subject to a violator's control. A position is deemed to have significant power, influence, or trust when the actions of incumbents must be taken into account by others in the performance of their related roles.

Additional Clarification of the Main Criteria

Some additional clarification may be helpful regarding the main criteria used in defining white-collar violations of law. We shall begin by further explication of the specific defining elements and then move to a consideration of special and marginal cases as they shed light upon our definition.

Organizations and Individuals as Violators. Organizations are culpable as well as individuals. While ordinarily organizations are culpable because of the illegal acts of members of the organization, an organization may be culpable without any culpable actions on the part of its members. These situations arise either out of their failure

to perform duties because of ignorance, negligence, or neglect, or from the illegal consequences of legally performed acts (Schraeger and Short, 1978).

An organization, for example, is often considered to have affirmative responsibilities under the law, e.g., to apprise itself of all the conditions for product advertising. Any performance violation, even that arising from ignorance, hence is a violation of law if it is defined as an affirmative responsibility. Similarly, while ordinarily individuals are culpable because of the intended acts they perform, they may be held liable for the unintended consequences of legal acts or for a failure to fulfill responsibilities or affirmative duties.

Case law growing out of the Food, Drug, and Cosmetics Act (FDCA) of 1938 may serve as an example of the codification of offenses of vicarious liability and by omission. In United States v. Dotterweich, 320 U. S. 277 (1943), the Court (at 281) expressly stated that consciousness of wrongdoing was not required for liability under the act, and further stipulated: "(t)he offense is committed . . . by all who . . . have a responsible share in the furtherance of the (unlawful) transaction." 320 U. S. 277, 184. But Dotterweich left the requisite degree of participation and responsibility undefined. The Court clarified that issue in United States v. Park, 421 U.S. 658 (1975). The defendant, Park, was the president of a large food distribution chain and was charged with violation of FDCA due to the insanitary condition of the corporation's Baltimore warehouse. Park sought to avoid criminal liability by arguing that the responsibility for sanitary conditions at this location had been delegated to a subordinate within the organization. The District Court instructed the jury that the central issue in determining Park's criminal responsibility was "whether the defendant held a position of authority and responsibility in the business of Acme Markets" (665 note 9). On appeal, the Fourth Circuit held that the jury instruction failed to state the law correctly. The Supreme Court answered (at 674) by defining "responsible party" as any person who had "(b)y reason of his position in the corporation, had responsibility and authority either to prevent in the first instance or promptly to correct the violation complained of" The defendant's status in the corporation created an affirmative duty to act consisting of: (1) a duty to implement measures to prevent violation, and (2) a duty to seek out and correct violations.

The effect of this decision as summarized by a quote in Heaviside was that: "All officers who have the power and authority, regardless of how attenuated and indirect, to implement measures to achieve compliance at any point in the business process culminating in the violation have a

responsible position and hence an affirmative duty to act." Notice, accordingly, is not a precondition to duty and no personal participation is required for liability. Since failure to perform this affirmative duty is a sufficient condition for culpability, a prima facie case is established by showing a violation, authority to correct or prevent the condition, and failure to do so.

The detection and sanctioning of violations involving affirmative duties depends much upon the statutory and case law in a particular area of regulation or enforcement. Recently Assistant Attorney General Heymann of the Criminal Division, U. S. Department of Justice, called for the enactment of a provision in the proposed criminal code for "reckless failure to supervise the conduct of an organization" (1979:35-36).

"Reckless failure to supervise.

Whoever being responsible for supervising particular activities on behalf of an organization, by his reckless supervision of or failure to supervise those activities permits or contributes to the commission by the organization of an offense against the United States is guilty of a misdemeanor punishable by a fine of not more than \$100,000. As used in this section, the term "reckless" refers to a state of mind under which the actor is aware of but consciously disregards a risk that a violation of law is occurring or may occur, and the risk is such that to consciously disregard it constitutes a gross deviation from the standard of care that a reasonable person would have exercised in the situation."

The assistant Attorney General (1979:34-35) justified a statute with criminal penalties for reckless failure to supervise conduct of an organization with the following arguments:

"The intricate hierarchy of most large business organizations in this country, coupled with the rather rigorous proof required for conviction as an aider and abettor, frequently makes it impossible to prosecute high level supervisors of an organization who have substantially contributed to an offense by lower echelon employees by recklessly failing to exercise supervision over their activities. An aider and abettor is liable to the same extent as the person committing the offense and the law thus properly demands proof that the aider has knowingly or intentionally assisted in the crime. Often, however, the culpability of a high ranking organizational officer may be less aggravated yet nonetheless warranting the imposition of a penal sanction. For

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example, an officer who was aware from various factual indicators or "danger signals" of a substantial risk that employees under this supervision were preparing a false income tax return for the organization or were engaging in price fixing or bribery of federal officials to increase company profits, and who in effect condoned such conduct by failing to investigate, supervise, or prevent it, should bear some criminal responsibility if in fact the employees were engaged in such a federal offense.

"We are not proposing a crime based on merely negligent conduct. Rather, we advocate the enactment of a lesser offense than aider and abettor liability predicated upon the conscious disregard by a supervisory official within of an organization of a substantial risk that his subordinates are violating federal laws, when in fact they are doing so. Under our proposal, the official would not be subject to imprisonment but would be guilty of a misdemeanor and could be fined or placed on probation."

Position of Significant Power, Influence, or Trust. This emphasis on affirmative duties and nonfeasance calls attention to the necessity to recognize that power not only can be abused or misused in committing acts but also that it is essential to exercise significant power when it is called for in the interest of lawful conduct or compliance with the law.

A question arises whether there are differences between legitimate positions of power and influence and legitimate positions of trust. From the perspective of the law, there are positions of power that do not involve a fiduciary or trustee. One acts in a fiduciary capacity when the business transacted or the money or property managed or exchanged is not for one's own benefit but for the benefit of another to whom one stands in a relationship of great confidence and trust and in whom a great deal of good faith is placed. At law, the trust term covers not only express trusts but such offices as executor, broker, guardian, a director of a corporation, and a public officer. More broadly speaking, not all positions of power and influence also involve significant trust, but trust normally involves a relationship with significant power or influence.

The degree of control and the magnitude of the resources of the organization subject to the offender's control that would define the offender's position as "significant" are subject to variable operational definition. On the one hand, we are inclined toward excluding thefts of disposable equipment entrusted or accessible to the individual for the performance of his job as well as employee theft that violates no more trust than

that of access to the premises in which the stolen object is located. On the other hand, where the violator is entrusted with power to acquire or dispose of the pertinent objects or to manipulate inventory records of the organization concerning these objects, we would usually include the act in our definition (Cressey, 1950; 1973).

It is well to bear in mind that a position of significant power, influence, or trust need not involve an employing relationship. Not only do fiduciary capacities at times lack such characteristics, but it is not uncommon for members of not-for-profit organizations who are not employees to misuse their office for personal gain. Positions on public boards or bodies similarly may be used illegally for personal gain.

Nor is it essential that the position exist within the framework of a concrete operating organization, though normally it will be so. We have already noted that persons acting as private individuals within a structured network or set of exchange relationships may commit violations. This may occur similarly within structured privileged relationships, as when an attorney violates the trust of an attorney-client privilege.

In classifying violations of law as white-collar, it is important to bear in mind that the occupation of the violator is never a criterion for classification. There are several consequences of this choice on classifying events.

First, no occupation is by definition a position with legitimate power, influence, or trust. Positions exist within organizations and derive their legitimacy from organizations. Legitimate positions derive their power from legitimate organizations. That position can be used by its occupant for legal or illegal gain and in legal or illegal ways. A lawyer or accountant, for example, in an illegal organization such as a crime syndicate does not occupy a position of legitimate power, influence or trust by our definition.

Second, power and influence may derive both from the exercise of an occupational specialty and from its being undertaken in a particular job. The lawyer who holds a public office, such as that of public prosecutor, is an example. As prosecutor, he may misuse the power of public office and be removed from it; as lawyer he may be disbarred for the same conduct.

Third, not all violations committed by persons in positions of power, influence, or trust will qualify as white-collar violations. Persons in such positions often commit common or ordinary crimes, e.g., murder. Or they can

commit political or organized crimes. To qualify as a white-collar violation, the position must be used in the illegal gain.

Gain. Corporate actors clearly have gains when none of its members has any pecuniary gain, either directly or indirectly. Indeed, the risk of sanction from illegal corporate gain, i.e., the disincentives, may substantially outweigh incentives for the individual who assumes a risk of negative sanction without any prospect of personal gain. An organization, such as a police department, for example, may deliberately misreport its volume of crime because it is part of an evaluated network where honest reporting places it at a disadvantage or in risk of negative sanction, e.g., responding to the media about why its crime rate is higher than that of "comparable departments." The pressure for misrepresentation to protect the organization in its competing environment, therefore, is considerable.

It likewise should be clear that the climate of an organization may conduce individuals to use their position in an organization to commit criminal acts on its behalf by concealment or misprison of a felony because the negative consequences of disclosure are substantial. Studies of "whistle-blowers" within organizations show there are very substantial negative sanctions for violating group norms against disclosure. Within some organizations, such as police departments, a conspiracy of silence may be maintained when neither the potential whistle-blowers nor the organization makes any direct gain; what is maintained is a belief of protection from negative sanctions following disclosure.

Special Cases of White-Collar Violations. We have selected a number of cases, designated special cases, that are singularly important in operationalizing the defining characteristics of white-collar law-breaking. There are two kinds of special cases--those that depict an occurrence or event for which all cases are by definition white-collar violations and those that define the core characteristics of the defining elements. Each of these types of special case is presented and illustrated below.

Under certain conditions, positions of significant power, influence, or trust are used for illegal gain in such a way that they highlight the core characteristics of white-collar violations. The most common occurrence of this kind is where the position is used to impede the social control of violations, as when a position is used to obstruct justice or cover-up the occurrence of violations. Here the object of the gain is to avoid the invocation of legal processes. These activities of obstruction appear to be especially characteristic of white-collar violations of law.

The offense requires that a position of power be used not only to commit an offense but also to thwart its detection and sanctioning.

Rather closely related are violations involving "conflict-of-interest." Such violations take place when two or more interests conflict in carrying out the responsibilities of a particular position or when the demands of two different positions of power come into conflict. Examples of these conflicts of interest abound, but some specialized forms of offense are defined by conflicts of interest. The offense of "insider trading," for example, involves a conflict of the interests of private person and employee responsibility to a firm and its stockholders. What is characteristic of these violations is that the position by definition stipulates the conflict of interests. Thus one is deprived of certain actions or behavior by virtue of one's position; to act then is to violate the requisites of the position (Rider and French, 1979).

It should be clear that cases of cover-up and of conflict-of-interest need not involve individual gain. Often they involve organizational gain. It is quite common for employees of organizations to cover-up or obstruct justice in the interest of protecting the organization, to gain power or influence for the organization, or to prevent it from being harmed by disclosure.

The second group of cases involves the conditions under which ordinary crimes or common crimes become white-collar violations of law. These cases are especially critical to our classification scheme since they both challenge the notion that all common crimes are ipso facto not white-collar offenses and they highlight the critical defining elements of white-collar violations. We shall illustrate the application of the definition to crimes of violence against the person.

Crimes of violence against the person become white-collar offenses when the violator uses a position of power, influence or trust in a legitimate institutional order to commit the act of violence for personal or organizational gain. What we choose to emphasize here is that violent means can be used to commit white-collar violations. Below we provide several illustrations of proved or alleged major crimes of violence against the person that qualify as white-collar crime.

Homicide and Attempted Homicide:

- (1) The Karen Silkwood Case. Though the criminal proceeding never was completed, it is alleged that her employer arranged for her death by motor

vehicle accident to avoid her "whistle-blowing" activity of disclosing radiation hazards at the place of employment.

- (2) The Joseph Martin Case. Prosecutors secured the conviction of Martin, an agent for New York Life Insurance Company. Martin hired Earman to kill Foreman in order to collect on a \$56,000 life insurance policy Martin sold Foreman. Martin needed the money, according to testimony, to pay premiums on \$600,000 worth of bogus policies he had fraudulently sold other people in order to boost his own salary and finance a life-style beyond his income. (Washington Post, December 14, 1979).
- (3) Homicide. Two jail officers at the Bexar County Jail in San Antonio, Texas, were indicted in U. S. District Court, San Antonio, for conspiring to violate the constitutional rights of Hugo Saenz by arranging for his strangulation. The officers were involved in illicit drug traffic in the jail in a conspiracy with some inmates. They used their position in the jail to move Saenz to a cell where he was strangled by hanging. (Department of Justice Release, Wed. July 11, 1979).

Aggravated Assault:

- (1) Nine members of the Church of God and True Holiness in Durham, N. C. were indicted for beating, whipping, and threatening workers in a poultry plant established by the Church (New York Times, Dec. 22, 1979).

Manslaughter and Reckless Endangerment: These offenses when committed by organizations currently are indictable under some state statutes and a few specific federal ones.

- (1) The Buffalo Creek dam disaster at Buffalo Creek, West Virginia in 1972 killed over 125 persons (Stern, 1976:3).
- (2) Willow Island, West Virginia, cooling tower collapsed while under construction, killing 51 persons.
- (3) A Buchanan County, Virginia coal mine operator and his company were convicted in federal court of criminal safety violations that caused the death of a miner in a cave-in in 1978 (Washington Post, Dec. 18, 1979:2).

At the present time, the U. S. Department of Justice is urging that a reckless endangerment statute be added to the new criminal code. Assistant Attorney General Heymann has presented the Department's argument for the general statute in the following terms (1979:33-34):

"Numerous present laws punish, at a misdemeanor level, the knowing or intentional violation of federal statutes enacted to protect the public health or safety. Mere misdemeanor treatment is insufficient, however, when the conduct constituting the violation is undertaken in reckless disregard of the fact that it may place persons in substantial danger of loss of life or serious bodily injury. Pollution of a municipal or county water supply with a highly toxic chemical that would result in grave illness or death if ingested is but one example of an aggravated form of criminal public health or safety violation that is deserving of felony punishment. The Department firmly supports the inclusion of an offense of reckless endangerment, graded at a felony level, covering situations in which the defendant violated federal criminal public health or safety laws and was aware of but disregarded the risk that this conduct would place another person in danger of death or serious bodily harm. Recklessness would mean, as in the Subcommittee's draft, that the disregard of the risk was a gross deviation from the standard of concern that a reasonable person would have exercised in the situation. Such a provision, which was included in the bill passed by the Senate last year, is derived from New York law and was included in both the Model Penal Code and the Brown Commission Report. Its adoption in the federal criminal code would in our view more effectively deter aggravated violations of health and safety laws and would be consistent with social values regarding the importance of human life."

Marginal Cases. Marginal cases help define the boundaries of white-collar violations of law. Marginal cases both distinguish white-collar from other types of offending, e.g., political or organized crime, and furnish criteria for determining which cases are included (and excluded) by operational definition.

Offenses of false personation and false pretenses would not ordinarily qualify as white-collar violations of law. The criminal offense of false personation occurs when someone falsely represents some other person and acts in the character thus unlawfully assumed in order to deceive others and thereby gain some profit or advantage, or to enjoy a right or privilege of the one impersonated. A common example is that of impersonating a law officer or public official. These offenses do not qualify because the actual

position in a legitimate organization is not ordinarily used; the deception lies in the initial pretense of occupying a position which then is used for some illegal gain.

The "gain" element of the definition presents some problems of classifying events when persons use positions of legitimate power to violate the law, yet appear to have no direct gain (such as personal power, money, or prestige) or indirect gain (such as psychic income). Indeed, persons may risk losing past gains or actually incur some loss in carrying out violations. Absence of personal gain or incurring actual personal loss, however, does not preclude defining a violation as a white-collar offense provided there is some reasonable presumption that the violation intended some organizational gain or if an illegal act was committed for organizational gain.

Individuals may be willing to incur losses or at least to anticipate no gain when they act on behalf of an organization because of a belief that failure to perform the violation threatens personal or organizational losses. Either they believe that a failure to perform the violation will harm the organization or that the organization may harm them if they do not perform illegally on its behalf.

Yet it is not even essential that persons be aware of using their position in an organization illegally on its behalf. Members of organizations not uncommonly perform illegal acts on behalf of the organization because they are told "that is the way it is done here" or "this is our practice." Acts such as false entry or double-entry bookkeeping, backdating transactions, soliciting contributions, serving as a courier, or reporting anticipated as actual revenues may be done without much awareness of how they benefit the organization or how such practices violate specific statutes. To qualify as white-collar violations it is essential only that the acts be done with a belief they are an essential part of one's work for the organization.

The sole criteria that apply then in instances where personal and organizational gain are problematic is that the activities be performed to either avoid organizational harm or to maintain the organization. Any anticipated gain need be regarded solely in the interest of maintaining institutionalized relationships, current benefits, or position. Thus business officers of multinational companies often contend that bribes may be offered to foreign officials to secure contracts solely because it is necessary to maintain a competitive position in markets where all competitors are not bound by it being illegal behavior or

that illegal contributions may be made to all political parties and candidates to "hedge one's bets," i.e., to maintain one's current position.

The status of the offending party within a social system and the applicable jurisdiction for behavior also will determine whether or not behavior is to be regarded as a violation of law. For the most part, offenses committed by U. S. nationals or corporations against the laws of other countries are not treated as violations of law even when they would be so regarded had the violation occurred under U. S. jurisdiction. Thus multinational corporations which commit activities outside the United States that would constitute violations within its jurisdiction are not treated as having committed white-collar violations by our definition. Similarly, any foreign corporation that uses a position of power in a legitimate institutional order of the United States for illegal gain is guilty of a white-collar violation. Some offenses indeed may apply specifically to such foreign organizations, as is the case of "dumping," where foreign produced products are sold in the U. S. market at rates below their production cost or a "fair" market price.

There is difficulty in operationalizing events as white-collar violations when there is no information on an offender--only information about an event. The reason is obvious enough. When it is unclear whether a position of power in a legitimate institutional order was used for illegal gain it becomes impossible to classify events as white-collar violations. Something must be known about the violator's position and whether and how it is used for illegal gain before an event can qualify as a white-collar offense under our definition.

It is characteristic of some violations of law that they become offenses only when an offender is identified. This is the case, for example, with ordinary crimes such as prostitution and public drunkenness. It also seems characteristic of violations where there is a failure to comply with rules or standards, a characteristic common to many technical violations, such as the failure to file required reports.

Our definition of white-collar violations does not permit us to classify law violations as white-collar violations without information on whether a position of legitimate power was used for personal or organizational gain. We cannot classify and count, for example, pollution of the environment as white-collar violations since we often do not know who committed them and for what purpose. Nor could we classify and count them as white-collar violations if we knew only who committed them but could not demonstrate that there was illegal gain in one of the senses previously

defined. To cite another example, a recent report of a jury tampering attempt (New York Times, Oct. 2, 1979:B-1) reported that no violator could be identified, though the purpose of the violations seemed reasonably clear. Lacking information on the violator's position, it could not be classified in our scheme. These examples should help to make clear that under our definitions we ordinarily cannot speak of white-collar offenses without at least some knowledge of violators, though the actual or intended victims may be unknown.

The classification of events as law violations is insufficient for us to classify them into one of our four major crime classifications: ordinary, white-collar, political, or organized crime. Thus we cannot classify and count an event presumed a homicide as an ordinary crime unless the violator is known, since homicides might be for political, white-collar, or organized crime purposes as well as ordinary or common. The legal classification of an event as a "violation" or "crime" then is insufficient to classify it into one of the four types of violation set forth in our definitions.

Violations committed by private persons acting in an individual capacity, or for their families, where the violation relates to the protection or enhancement of gain derived from significant institutional position constitute another marginal group. The primary purpose of the qualification "protection or enhancement of gain derived from significant institutional position" in the definition is to include certain personal income tax offenses--those where the violator uses a position of "significant power, influence, or trust" in the legitimate social order to commit the offense. This latter restriction excludes from our definition income tax offenses committed by persons in reporting income derived solely or largely from illegitimate enterprises--underworld or organized crime income--and those where tax-evading possibilities inhere in the occupational source of income (rather than the power of a position) such as the tipping practices for waiters or the income of domestics where employers do not report payments. Tax offenses are included then when they involve actions relating to the source of gain, resting upon opportunities afforded by legitimate positions of power, influence, or trust to disguise or manipulate income or wealth for tax-evading purposes. Not uncommonly, organizational structures such as businesses or investments provide such opportunities. Not infrequently, such evasion involves corporate tax violations as well as personal tax violations.

Many crimes are considered white-collar crimes simply because they are crimes of economic gain--economic crimes. There is a tendency, for example, to define all theft from employers as white-collar crimes. Yet, they usually do not

involve any use of a significant position of power, influence, or trust in the organization. By contrast, thefts by organizations ordinarily qualify as white-collar offenses because organizational power is an essential element in their commission. Similarly many classes of crime often are spoken of as white-collar crimes because they are economic crimes committed by well-to-do persons. We made clear at the outset, however, that the socioeconomic status or economic position of the violator was not a criterion for classifying events as white-collar violations of law. Thus well-to-do persons commit ordinary crimes in relative abundance.. They shoplift, make false representations in sales, steal from their employer or business, rape, kill, coerce, pollute, deceive, and intimidate as private persons. The conjunction of almost any violation and the status of a violator thus is no basis for its classification as white-collar, ordinary, organized, or political. The grounds for such differentiation is a matter to which we now turn.

Major Classes of Violation

We have attempted to define white-collar violations of law, including white-collar crime, in a manner that excludes violators and violations that are ordinarily associated with other domains of law violation: underworld or organized crime, political violations, and common or ordinary crime, including crimes of "passion." We shall briefly define each of these types of law violation to clarify their differentiation from white-collar violations.

Organized crime violations are those violations of law to which legal penalties attach that involve the illegal use of a violator's position of significant power, influence, or trust (and/or illegal means) in an illegitimate economic or political institutional order for the purpose of illegal gain.

Political violations of law are those violations to which legal penalties attach that involve the use of illegal means (including the illegal use of power), against the legitimate political institutional order to achieve illegitimate political ends or a substitute illegitimate political order.

Ordinary or common violations of law are those violations to which legal penalties attach that do not involve the use of position in the legitimate economic or political institutional order for the illegal gain or consequences.

It should be noted that the primary criteria for differentiating among these classes of violations of law is the legality of the means, of their use, and the legitimacy of institutional orders.

"Organized crime" is of pertinence to the study of white-collar violations of law only where the activity makes use of a legitimate enterprise or institution in its offending. We are interested in "Upperworld" (Geis, 1974) rather than underworld crime, but we do not wish to ignore the upperworld crimes of those who may also participate in the underworld. Most "common or ordinary crimes" against property--burglary, robbery and larceny--both against individuals and organizations are excluded from white-collar crimes. Employee theft becomes relevant only when the theft proceeds from a "significant position" in the organization. Ordinary employee pilferage is excluded.

By restricting our attention to crimes involving intent to gain, we exclude political crimes and ordinary "crimes of passion," regardless of the class status of the offender. "Political law-breaking" is excluded from white-collar law-breaking since it involves ideological, collective loyalty, and power motives in which pecuniary gain by the offender is not a major or immediate motive. As is usual where motives or intent must be inferred, marginal cases arise which must be resolved somewhat arbitrarily. The case of illegal corporate campaign contributions, where it is unclear in what degree ideological or self-serving motives are being pursued by the donor, may serve as an example. Recipient rather than donor motives may be used to classify the event. If an agent of a political party or a candidate is culpable as recipient, the act would clearly be a white-collar law violation, since it secured pecuniary gain for the recipient or his organization.

Above all, we wish to emphasize that different classifications of violations and different classes of violation can apply to the same natural event. Most classifications of violation treat an event as a composite of elements, each of which can relate to the same or to different classes of violation. Both our classification of types of violation and legal classes of violation, for example, may be applied to the same event. For some classes of violation and for some instances in events, the two classification systems will treat the events in the same or similar ways. But quite often we may classify events that fall within a relatively homogeneous legal class of violation into several different classes of violation. We can illustrate this with the legal classification of assaults classified as homicides. We have pointed out that some events which are classified as homicides (or as murder or manslaughter) under legal classifications are catalogued as white-collar offenses in our system. They are considered

as white-collar when the homicide involves the use of a position of significant power, influence or trust in a legitimate organization for illegal gain. In the same way, a homicide of a major political figure may qualify as a political act of assassination. Other killings committed by the use of position in an illegal organization are treated as organized crimes. Ordinary killings are those instances of homicide where a position of power, influence, or trust is not used for illegal gain or consequences. Inasmuch as most information on violations of law apply legal categories to events, the relationship of our classification to legal classifications of the same events is of importance. The more disjunctive the two classifications for the same events, the less we are able to use information produced by current enforcement and regulatory agencies.

We can illustrate this also for what might commonly be thought of as a "white-collar crime," the crime of fraud. There may be elaborate forms of misrepresentation in organized crime swindles. There may be a voter fraud designed to capture political power or simply for personal gain. And there are common forms of misrepresentation in ordinary transactions that would hardly qualify them as "white-collar crimes."

To reiterate the basic point, a crime or law violation is not simply an event but an abstracted judgment or classification of information about events. Thus the "same" event can be classified in different ways depending upon which properties give rise to which classes of violation. And the same class of events can refer to the same properties in different events. The more complex the event, the more likely it is to involve different classes of law-breaking.

A complex example may disclose the intricacies of classifying "events" that are made up of discrete but related occurrences. A trial in Federal District Court in San Francisco in the spring of 1979 involving eight of fifteen potential defendants (six turned state's evidence and a seventh was tried separately) (New York Times, March 29, 1979). One of the issues in the trial was whether there was a "conspiracy to use violence, including murder, to gain control of the tavern business in Pierce County, Washington"--a federal charge of racketeering. Among the specific events recounted at the trial were the use of force and arson to get tavern owners to sell. The sheriff of the county was accused of taking bribes to frustrate investigations, to provide information on raids, and to have his deputies harass tavern owners. In all, the indictments included allegations of murder, arson, bribery, extortion, illegal gambling, mail fraud, violence against persons and property of suspected informants, as well as the federal charge of racketeering in interstate commerce. The complex

event of "racketeering" involved many specific events that might be considered different crimes. The sheriff was culpable as a white-collar offender under our definition and individual events of arson, murder, and assault might have been prosecuted under state law as ordinary crimes. Their "patterning" as part of the use of coercive power to control legitimate business organization--an abstraction--also qualifies both the overall charge of racketeering and the specific crimes as 'organized' crimes.

Where specific violations of law are at issue, other criteria may be useful in distinguishing white-collar from different forms of law violation. A number of these are considered below by way of illustration.

Monopolies may be classified as violations of law in a number of ways, each of which selects different features of monopolistic organization as a basis for classification. The law generally recognizes both civil and criminal antitrust involving monopolistic organization, the distinction resting largely on the degree of culpability of offenders. Economists, such as Schelling, distinguish among three types of monopoly on the basis of the legality of the means used to achieve a monopoly market position:

" . . . Those achieved through legal means, including greater efficiency than one's competitors, or the inability of the market to support more than one firm; those achieved through means that are illegal only because of antitrust and other laws intended to make monopoly more difficult; and monopolies achieved through means that are criminal by any standards, means that would be criminal whether or not they were aimed at monopolizing business." (Schelling, 1967:116).

Monopoly then, for Schelling, is illegal when the means used to achieve it are illegal, either because the law makes some means illegal to make monopoly more difficult (*mala prohibita*) or because the means are criminal means, whether or not their use is monopoly (*mala in se*). The monopoly created by organized crime usually is "criminal monopoly" because it uses criminal means of violence or coercion to create the monopoly market.

Our definition rejects "legality of means" used to commit acts as a criterion for classifying matters as organized or white-collar offenses. If a legitimate organization pursues illegal monopoly ends by any means, this is a white-collar violation of law. If a coalition is organized for the primary purpose of monopolizing a market, it is by our definition engaged in organized crime.

The other form of racketeering, extortion, as Schelling notes, involves criminal competition or living off someone else's business by the threat of criminal violence. If one establishes a set of businesses and destroys competitors or scares them out of business by violence, one is a criminal monopolist, but if one merely threatens to destroy them unless part of the profits are given as the price of leaving them alone, one is an extortionist (Schelling, 1967:116).

In organized crime, as in white-collar crime, much attention has been given to the status of members who commit offenses. Investigations of "organized crime" tend to focus disproportionately on top rather than low-echelon members of the organization and thereby identify organized crime offending with the "powerful" in socioeconomic or organizational status. Those at the bottom who typically are low level employees and, as in all pyramidally structured organizations, are largest in number are not considered 'organized crime' offenders. They have the least skill and are most expendable to the organization. Typically they take the largest risk for the organization, much as do miners or any other lower level organizational employee. When arrested for violations, these low-level employees usually are charged and convicted of ordinary crimes and their offenses are classified as ordinary rather than organized crime. Thus, low level employees typically are convicted of offenses such as possession, purchase, sales, theft, assault, or in the rarer case, homicide. But these classifications carry no implication of conspiracy or organizational membership.

The recruitment of employees to organized crime is itself of interest. For some types of organized crime, the source of recruitment is employers' indebtedness to the organization or reliance upon it for money and supply. This is typically the case with narcotics, numbers, and similar types of organized crime. Note that it also has parallels in prostitution and pimping. One might also argue that major points of polarization in white-collar as compared with organized and political forms of crime are elements of secrecy in offending and what is open to strategies of law enforcement. In organized crime the major emphasis falls upon keeping the organization's identity and those of its officers and main employees secret--much as in a spy or terrorist organization. But its illegal acts are generally open and quite readily knowable. There is no cloak, for example, for illegal gambling per se. Though the transactions of organized crime, then, are not openly visible, they are quite open to low level law-enforcement detection. By contrast, political acts of terrorism must be made public, be knowable as political acts, and have major publicity.

Both of these cases, gambling and terrorism, are in sharp contrast to many forms of white-collar law-breaking, if not most, where there is an emphasis on keeping the event as well as the violator secret. Indeed, if the event becomes known, it commonly points to the offender. This is owing to the fact that a position of power, influence, or trust is employed as an element in the crime. For white-collar violations, as we have noted, offenders use the position to keep matters secret from detection as well as to perpetrate the offense. Moreover, where it is difficult to keep matters secret from detection, it is not uncommon for white-collar and organized crime violators to corrupt the detection and enforcement systems.

It is no simple matter to determine the nature of gain in offending and motivations for the gain. The imputation of motivation is a precarious exercise. Yet such distinctions are essential to categorizing some types of violations of law, particularly crimes. We have already noted that there may be difficulty in discriminating between white-collar and political offenses under the law. One criterion for identifying political gain is in terms of the nature of individual gain--if one cannot infer that there was a motivation of gain for the political contributor, one might infer it from the gain of the recipient.

Still, where collective interests are at stake, it may be difficult to demonstrate motivations of collective gain and to distinguish political from white-collar violations in these terms. It is apparent that certain kinds of political offenses, e.g., acts of terrorism, are justified entirely in collective interest terms; personal power must be denied. Yet such is not uncommonly the case where political contributions may be used for individual gain, e.g., election to office, but justified entirely in terms of the collective ends, e.g., the gains that accrue to the collectivity from re-electing the incumbent, etc. Wherever there are both individual and organizational gains, as there often are in political violations of law, it may not be a simple matter to distinguish white-collar from political violations of law under our definition.

Katz (1979) has emphasized that white-collar offenses are characterized by long periods of investigation and protracted litigation. In areas such as antitrust, civil litigation often may exceed that required for criminal matters. We have noted that white-collar violations often have the appearance of ubiquity of contest, i.e., the violator contests the status of the violation and challenges the procedures and proceedings for handling white-collar matters. And, federal investigators emphasize the protracted nature of investigation leading to criminal prosecution. Recent testimony on behalf of the Task Force to Investigate corruption in the GSA emphasized that "...

generally in the fraud and white-collar crime area prosecution activity is long term and may bear results only after extensive investigative work had been done" (Lynch, 1980:4). This characteristic of white-collar crimes seems to contrast sharply with ordinary violations of law where, at least in criminal matters, the typical event has a short period of investigation and, relatively speaking, most matters are disposed of within short periods of time.

Such characterizations can be misleading, however, even with regard to central tendencies, since much hinges upon strategies of detection, investigation, and litigation or adjudication. As we shall have occasion to report later, a great many investigations of white-collar violations are short-term and acknowledgment of violations without extensive investigation is not uncommon. Indeed, in some areas, such as tax violations, unless matters are to be treated as criminal, there may be little investigation and quick settlement. The same is true for many compliance programs where inspections and audits turn up evidence of lack of compliance or violation. The characterization of white-collar law-breaking, then, is requiring length investigation seems more apt where the strategy of detection is reactive rather than proactive and where even proof of violation may be lacking at the outset, i.e., it may require extensive investigation to determine whether violations in fact occur. It may be more correct to conclude, therefore, that only some types of violation are characterized by protracted inquiry and that extended litigation is more characteristic of the handling of some kinds of criminal matters than others. Indeed, where administrative law provides alternatives to litigation, many matters are disposed of in short periods of time.

Subsidiary Criteria Defining White-Collar Law-Breaking

Our previous discussion has called attention to some subsidiary criteria that have been suggested as defining elements in white-collar law-breaking. Some of these, we have suggested, may distinguish among sub-types of law violations and others appear spurious as defining elements. Below we consider a number of other subsidiary criteria that merit consideration in defining types of white-collar law violation or impose some limits on defining instances of white-collar law violation.

Age and White-Collar Law-Breaking. Quite clearly, white-collar law violations depend upon opportunities to commit these offenses--one must be in a position of significant power, influence, or trust. And quite clearly such positions are not ordinarily open to children or youths. White-collar offenses thus are more limited in the

age distribution of their perpetrators, at least at the lower limit of that distribution, compared with that for other types of offenses.

Virtually all types of offending, other than white-collar law violations, are quite frequently done by youth and seen as part of youth offending. Even a substantial amount of organized crime involves youth. Organized crime increasingly turns to young persons to do the lower level jobs precisely because their punishment is apt to be less if caught. Political crimes often include the very young and young persons typically initiate a 'crime career' by committing ordinary offenses.

Though the opportunities for young persons to commit white-collar law violations are limited, they are not altogether lacking. Some of the relatively few opportunities for young persons to commit white-collar offenses arise in the context of participating in school or voluntary organizations. Major opportunities arise with respect to extra-curricular activities, particularly where these activities are student controlled and there is very little audit or accountability. Thus, fraud and graft have been documented in solicitation of printing, advertising, photographic and other contracts for school newspapers, yearbooks, and athletic or theater program advertising. This is perhaps more evident in college than in high school activities. Sports also provide opportunities for white-collar violations. Prominent high school and prep school athletes become implicated in recruiting violations, though most of these would not qualify as white-collar crime because they involve athletic conference rule rather than law violations. Voluntary not-for-profit organizations similarly may provide some youth with opportunities to commit white-collar offenses.

It remains the case, however, that where age is a criterion for entry into or occupancy of position in the society, such positions are typically closed to youth and youth will not have the opportunity to commit offenses arising in connection with such positions. There are criteria of age eligibility with respect to holding public office, membership in work organizations, and participation in public programs.

What should be apparent is that just as there is some positive correlation between the socioeconomic status of position in a legitimate organization and white-collar offending, so the criterion of occupational position restricts offending by youthful members. The fact that some criteria are correlated with others in the definition should not determine their inclusion or exclusion as defining criteria, however. The extent of collinearity is always a matter for empirical verification.

Harm Caused. Our proposed definition of white-collar crime can be faulted on the grounds that too little attention is given to defining characteristics that refer to victims rather than offenders. Thus, our major determinant is not the harm caused victims by the activity (Schragger and Short, 1978:412) but one of the illegality of gain to offenders.

The principal elements in our definition of white-collar crime are: (1) the violator's use of a significant position of power for (2) illegal gain.

The corollary condition that there be damage or harm to victims is an essential condition of all torts as well as crimes. Civil actions commonly sue for recovery of damages. This latter element of the amount of harm or loss to victims ordinarily enters into both the definition of types of violations as an element of their seriousness and in the nature of the sanction or penalty to be levied. In general, there is a positive correlation between the seriousness of the violation and the range of possible penalties. But in practice, matters that are classified as the same type of violation vary considerably in the harm done and the penalty assigned.

Although calculations of probable harm are implicit in the definition and classification of types of law violation and in the range of possible penalties attached to each type of violation, in practice the actual harm done to victims is more often than not the principal element in determining the offense alleged and later, the sanctions. The precise calculation or estimation of harm appears to be more likely for civil suits than for criminal matters and also for assigning administrative penalties than for determining civil awards.

Yet on the whole it is characteristic of white-collar violations of law, particularly those that are not formally litigated or adjudicated, that information on harm done to victims is often lacking. There are a number of reasons why information on harm is lacking, imprecise, or difficult of determination.

First, some white-collar violations of law lack information on victimization because the activity prohibited in the nature of the case produces no damage or negligible amounts. Such actions are prohibited at law because they are seen as potentially harmful to collectivities of actors or to the society as a whole if they are aggregated in their effect. Typically for such violations no evidence of damage, therefore, is sought.

There are several different ways that individual events are defined as inconsequential though their aggregate effect is seen as damaging.

For one, under some conditions, the effect of an individual violation is negligible but the way in which such violations occur is damaging to collectivities. They may be damaging because their simultaneous occurrence is harmful. This is the case with the illegal use of a radio spectrum, for example. If an individual occasionally uses a spectrum frequency, it ordinarily makes little or no difference to other users, but the simultaneous use by many unauthorized users can be disruptive of any spectrum use. Hence the law punishes any and all violators.

Damage also may result from the repeated use of an illegal means or repeated illegal acts of the same kind. The illegal shooting of a few animals normally is inconsequential to the survival of their species, but repeated shootings may endanger a population of animals and hence all are prohibited. The same is true where there are many point-sources of pollution, each of which causes little harm, but which contribute to the aggregate effect. This appears to be the case leading to the ban on the use of aerosols and for the control of pollution by automobiles.

Other acts are harmful when they occur as a sequence of events in which case they may be harmful to individuals as well as collectivities. Normally, in these cases the cumulative effect of harm is evident at a much later point in time. In some cases, such as exposure to small amounts of radiation, there may be a calculated ceiling of exposure so that each event may be seen as producing a quantum of harm that is not damaging except in terms of its contribution to the total exposure one may experience without severe damage or death.

Under other conditions, the effect of an individual violation may be non-existent and the risk of damage improbable or low even for an aggregate of violations, but the damage, when it results, is considered so consequential that it is prohibited. It is highly improbable, for example, that many employee errors in nuclear reactor facilities will produce any damage and it may be improbable that any one of them will produce any serious damage, but since the damage of a nuclear explosion is considered so harmful, many of the employee acts will be treated as violations and punished accordingly. It may also be the case that the effects on individuals are almost always negligible but their aggregate effect is seen as staggering. This is the case with certain price-fixing or consumer fraud cases where only estimates of aggregate effects are possible.

Under yet other conditions, it may be difficult or impossible to determine the amount of collective harm particularly at the time the violation is detected and some action taken. U.S. Customs seizures of goods for duty, for example, may be seen as responsive to acts not immediately harmful and it may be difficult to determine the act's long-run harm if the goods are sold for duty and expenses. Sometimes, it may be difficult to estimate losses because one cannot accurately determine the amount. This is the case with price-fixing violations where one cannot precisely determine what the market price would have been had the market operated freely (which it could not under price-fixing).

Second, not all victims who have been harmed by an action are aware of their status as a victim. Most victims of price-fixing are probably unaware they have been victimized by a cartel practice. Many victims of consumer fraud or false advertising do not know they have been deceived in their purchase or by the advertising promises (indeed, is a person who sees but who does not act upon false advertising victimized by it?).

Third, for some offenses it seems that the damage occurs primarily to a trust relationship even when other harm has been done. It is difficult to determine the amount of harm done by a "damaged" relationship, whether it be that of a fiduciary in business, in government, or in settling an estate. How harmful is the corrupt official to the public trust? When is the corruption of officials damaging to the organization that employs them, i.e., when is the organization regarded as "corrupt."

On the whole the disparities between individual and aggregate losses make it particularly difficult to determine both the seriousness of events and the seriousness of sanctions. Where personal injury results in severe illness, disablement, or death, regulatory statutes are likely to take the consequence into account. Reckless endangerment statutes and provisions for criminal penalties when corporate negligence results in death testify to the importance of traditional notions of bodily harm in defining the seriousness of white-collar matters (Schrager and Short, 1980). Yet even in such instances the penalty structure seems steeper when such offenses occur as ordinary in contrast to white-collar offenses. The maximum penalty for reckless endangerment resulting in the death of an employee under OSHA legislation, for instance, is a fine of no more than \$10,000 or imprisonment of not more than six months, or both for a first conviction and double that amount for one or more prior convictions.

Where damages to victims are calculable in monetary losses, for opportunity as well as actual costs, legislation avoids attaching gradations of seriousness to events and provides instead for ways of compensating for losses by means such as restitution, indemnity, or penalty.

As a general rule, then, it is difficult to characterize many of the classes making up the universe of white-collar law-breaking by degree of seriousness, although attempts have been made to develop public ratings of their seriousness (Schrager and Short, 1980:20-26). Indeed seriousness in terms of the consequences of behavior for victims often will be lacking as an element of knowledge about a particular white-collar matter. One might expect, therefore, that indicators of white-collar sanctioning often will have the appearance of arbitrariness or of "lenience" precisely because information on the nature and extent of victimization is lacking for sanctioning in the particular case for it is not apparent how that lack of information has entered as an element in defining the crime or in the actual event under adjudication.

Despite these difficulties and others shortly to be discussed, a uniform classification of white-collar violations of law should take into account the seriousness of the event. For white-collar law violations vary in their seriousness much as do ordinary or common crimes.

The set of "ordinary" crimes selected for Uniform Crime Reporting (UCR) is based in part on the criterion of their seriousness. These crimes are spoken of as "serious," even though the actual consequences for victims in a large proportion of the classes of offense contributing most to the recorded Index of Crime are quite trivial in terms of their monetary losses. The substantial components of the Index--larceny, robbery, and burglary--are believed to be socially serious even though the modal loss to individuals for these classes of crime is trivial.

The UCR Crime Index in fact is a composite consisting of classes of offense that are of relatively low frequency of occurrence but of extremely severe consequence, notably homicide, and others that are of major consequence primarily in terms of their aggregate consequences. The fact that white-collar violations, as we have noted, include both sorts of classes makes them no different in these respects. Moreover, it is well to recognize that the modal white-collar violation probably has relatively little long-run effect on individual victims, and that the short-run effect typically is negligible. Much white-collar law-breaking thus is relatively trivial in its consequences for victims, but its consequences in the aggregate may be considerable.

While we shall treat some victim consequences as separate elements in classifying events, we shall regard them primarily as elements in the relative seriousness of violations. Seriousness, itself, as an element in defining crimes is not unidimensional. To determine the seriousness of an event, however, we shall first attempt to delineate the major dimensions of seriousness.

The harm caused by an action is generally regarded as the first and most important dimension in denominating an event as serious. A basic distinction often is made between crimes that involve property as a loss and crimes that involve persons as victims. Crimes that involve bodily harm to persons are generally considered more serious than crimes involving their property. Rossi, et al. (1974) provide some empirical evidence that crimes against persons contribute more to seriousness judgments than do crimes against property.

Another loss which victims may suffer is psychological harm. A person or persons may undergo psychological strain, anxiety, trauma, hospitalization and other forms of harm--some minor and some major--as a result of white-collar crime. This type of harm is less frequently attended to than the more obvious forms of loss like that of property or harm to one's person, and may be less frequently occurring, but it may be of some importance in judging the seriousness of white-collar delicts.

A second dimension that carries some weight in determining the seriousness of an act to society is the number of victims involved. When a particular crime affects a large number of people it may have serious social consequences. This aspect of seriousness, when coupled with the degree of injury or loss to each individual, adds power to the judgment of seriousness. A crime involving a ten-dollar loss to one individual may be considered trivial but a crime involving a ten-dollar loss to one million individuals may be judged as quite important. This seems to characterize the seriousness of consumer fraud. While we could consider the second dimension simply in terms of number of victims involved, we also could treat it as a ratio of victim losses to total losses from a given offender or some analogous ratio relating the individual herein to the aggregate harm from the same offender.

A third dimension, one that is extremely important in determining the seriousness of white-collar crimes, is the extent to which the harm involved in the offense is the consequence of negligence, fault, or intent. Harms range on a continuum from malevolence and deliberate maliciousness to failure to fulfill an affirmative responsibility or to exercise reasonable care. Such distinctions of culpability are particularly important in determining the seriousness of

violations with regard to matters such as pollution laws, the sale of consumer goods, and the violations of safety codes in occupational situations. While the harm involved in some of these cases may be formidable, the offense is generally considered less serious than if the harm was intended by the offender, as in certain acts directed against business competitors. Fraud cases usually involve a situation where the harm (financial loss) is clearly envisioned by the offender, since it is the major purpose of his/her behavior and his/her gain is usually synonymous with the victim's loss or harm. Malevolent offenses in the white-collar crime field are also not uncommon. The objective in such offenses is harm or intimidation to another party. Harming the ability of competitors to do business forms one class of such offenses. Various coercive devices, such as those reputed to be used to maintain high off-loading charges in meat trucking or in labor relations in various industries, would be others.

These three dimensions of seriousness--whether the harm is to persons or their property, whether or not it is intended, and the degree of injury or loss to each victim--comprise major dimensions determining the seriousness of white-collar violations of law (Schraeger and Short, 1980). They are summarized as follows in Figure 1.1 below.

The three dimensions in Figure 1.1 are not exhaustive of components of the seriousness of crime events. Another dimension is the social or moral stature of the norm that is violated, quite apart from the specific material consequences to any particular victim. Giving even small aid to an enemy in time of war is a case in point. The exploitation of religious organizations or symbols for illegitimate gain, as in the Pallatine Order or People's Temple cases, also illustrate this type of consideration.

Characteristics of the offender's position also can affect judgments of seriousness. Financial swindles by persons in positions of major responsibility in the business world are said to destroy general confidence in the institutions of business. This may erode the climate for investment, speculation, or any other business activity which is based on the willingness to assume certain financial risk in return for a potentially greater future gain. Just as many persons may not wish to invest in a company if its managers, directors, and employees cannot be trusted, at some point a cumulative erosion of confidence in business may have deleterious effects on a society's economy.

Shady dealing by politicians can have a similar effect in destroying confidence in a nation's leaders. This can demoralize a population and possibly lead to alienation, a lack of participation in politics, or more extreme outcomes.

FIGURE 1.1

MAJOR DIMENSIONS OF SERIOUSNESS
DENOMINATING WHITE-COLLAR CRIMES

Ratio of Individual to Aggregate Loss from Same Offender		Object of Harm	
		Persons	Property
High	Intentional		
	Negligent		
Moderate	Intentional		
	Negligent		
Low	Intentional		
	Negligent		

Loss of confidence, then, may be a harm to society and implicitly to the individual members of a society over and above any immediate physical harm or financial loss incurred. Offenses of persons in high status positions of trust, such as Presidents, cabinet members and corporate directors, are often considered serious, almost irrespective of other dimensions of seriousness of the offense committed. The dimension of seriousness, in general, can be approached altogether differently if the collective, rather than the individualistic, orientation of law is considered.

Another dimension of seriousness not represented in Figure 1.1 is that the gain to an offender is not necessarily coterminous with loss to the victim. A greater victim loss than gain to the offender often occurs when there are unintended consequences for the victimization event. When a firm with a reputation for reliability is defrauded in a way that results in much publicity, for example, damage to its reputation for reliability of business acumen may occur that results in even greater loss because of a decline in customers and investors. The perpetrator of the crime gains only from the loss incurred

in the fraud and not losses due to the harm in reputation to the firm victimized. Similarly, whenever an aggregate is defrauded in the same offense, the gain is greater to the offender than the loss to any individual victim, a factor we have taken into account in our ratio of victim to aggregate losses.

The exploitiveness of the crime in terms of the type of victim involved may also make it more serious. Bilking a poor person out of a certain amount of money may at times be considered more serious than depriving the rich of the same amount. Taking advantage of the ignorant, aged, innocent, the handicapped, or the uninsured represent similar types of offending that may be more serious due to the vulnerability of the victim.

Another relevant dimension of the seriousness of white-collar offenses concerns the nature of the loss involved, other than loss of real property or personal injury.

There are diverse forms of property, the loss of which can cause differing degrees of injury, depending partially upon whether or not the loss is reversible, replaceable or compensable. Thus ordinarily one may replace one's real property but not one's reputation or one's life.

An important category of harm may be the denial of rights. These include access to services, positions in organizations, political participation, or, generally the freedom to behave in a certain way. Certain white-collar crimes involving discrimination or other behavior may result in a loss of the right to do something over and above the loss of income or physical harm. This may add to their judged seriousness. (As stated elsewhere, however, we will not be concerned in the present project with discrimination-in-employment cases.)

Though the notion of "victimless crime" always is arguable in the context of multiple possibilities for harm to third and more distant parties, a word may be in order as to its relevance for white-collar offending. The notion of illegal gain implies in any given instance that someone is harmed by a loss--either some individual(s) or an organization. Hence, there are in that sense no "victimless" white-collar offenses. Moreover, the notion of risk always implies exposure to adverse effects (Lowrance, 1967:18).

Yet, as noted repeatedly, what constitutes "gain" is no simple matter and whether such gain accrues at another's loss and whose loss may be problematic. It is unclear, for example, who experiences what loss when a foreign person is offered and accepts a bribe. Nor is it obvious that there are victims in many instances of self-dealing; particularly

in those situations where the insider's use of resources creates no loss to the organization itself or to outsiders. Moreover, since attempts to commit acts are offenses the losses may never occur. Finally, as we have noted, many violations of standards may never involve any loss; they are only potentials for loss--risks. A serious infraction of mine safety standards may occasion no loss if it is corrected. Indeed, compliance systems may move to correcting behavior rather than to punishing for violation, particularly where the losses have been negligible or nonexistent. One seeks to reduce risk to an acceptable level. Indeed what is at issue in matters such as safety is the acceptability of risk. "A thing is safe if its risks are judged to be acceptable" (Lowrance, 1976:8).

Temporal Dimension. Measures of prevalence and incidence of crime typically assume that crimes are point-in-time events, i.e., of such short span that their duration in time is non-problematic. Though this assumption is open to question for many Part II, if not Part I, offenses, it often is not tenable for the duration of white-collar events. This is so for a number of reasons.

First, while a given victimization may be a point-in-time event, it may be but part of a continuing pattern of victimization by an offender, e.g., a stock swindle and many other types of fraud or misrepresentation often are continuing patterns of victimization by a single offender. Often, it is necessary to establish a pattern of action involving many victims before the existence of a crime in any one case is clearly established. For example, one instance of unavailability of "loss-leader" merchandise may be attributed to inadvertence, but repeated instances may establish a conclusion of "bait-and-switch" advertising. Thus, white-collar violations of law may vary in whether the consequences produce acute or chronic conditions for victims and whether they are a point-in-time or durable characteristics of offending.

Acute effects are produced either by point-in-time events or those which are of relatively short duration and bounded in time, e.g., a one-time loss that is taken as a tax deduction. By chronic, we mean that the effects are continuing in one of two senses. An consequence may be chronic in that the effect of a point-in-time event either continues or grows in intensity over time, persisting for relatively long periods. In the very special case, effects may not show up until much later, as may be the case with environmental pollution or industrial processes that later have serious health consequences, even generations later where the effects are on the gene pool. But an effect may also be chronic in the sense that the harms that it entails are recurrent or continuous and persist until the condition that produces them--a violation that is also either episodic

or continuous--is removed. Some schemes to defraud or practices of misrepresentation continue to produce victims until steps are taken to remove the offending. Monopolies have the same characteristic.

Closely related, but somewhat different, are cases where the violations produce relatively minor harm to any individual victim but the violator poses an acute or chronic effect in the aggregate. This may be true of stock swindle, for example, or where de minimus cases are aggregated into a substantial class action, such as in the cases of consumer fraud where de minimus victimization practices--large numbers of individuals with small losses--continue indefinitely unless an intervention is taken to conclude them. The classic illustration at the extreme are offenses involving systematic manipulation of the rounding of fractions in market transactions.

Second, it often is not reasonable to regard white-collar offending as having an onset and a termination, though terminal conditions may be created by systems of intervention, such as a law enforcement system, even when the onset cannot be determined. Since quite commonly white-collar offenses involve elaborate preparatory phases, it often may be difficult to fix their onset at a particular point. Clearly, where offending is a continuing violation, it is possible for individual victimizations to be point-in-time events even though offending is either episodic or continuing in nature, with its onset and determination quite indeterminate. It follows also that determination of onset depends in part upon whether one conceives of the events arising from intent or from negligence, a matter considered earlier.

Third, it is difficult to apply a temporal scale to measuring incidence, not only because events produce acute and chronic effects and because their duration in time is not always determinable, but also because the units of offending and victimization to which the events apply are not uniformly related to a time dimension. Consider the case of fraud. Suppose the event is victimization from false product advertising, is a person victimized at the point of believing the advertising, the point of acting on that belief by making a purchase, or at the point the misrepresentation is discovered? Conceivably these points could all be treated as giving rise to a single victimization with the beginning and end points being relatively indeterminate. Or they could be regarded as separate victimizations of false advertising and fraudulent sales.

Significant Position in Society. The nature of white-collar offenses can be conceptualized according to what it is that the offender who is the holder of a "significant"

position in the society controls due to his holding that position, be it people (including positions in an organization and services rendered by them), symbols (such as information), or things such as money, products, or property. In other words, does he/she have access to or control of employees who can be induced to act in ways contributing to a crime, symbolic information which can be used to appropriate objects of value, or things such as money, products, or property that can be misappropriated, illegally exchanged, or utilized in other illicit activities? An individual may have access to combinations of these resources as well, such as the control of people and symbols, people and things, symbols and things, or all three--people, symbols, and things.

Examples of these possibilities may be helpful. White-collar crimes occur where people or agencies are in a significant position to control what others do to make them conscious or unconscious accomplices (and, occasionally, victims). The simplest cases involve using organizational subordinates to perform services of purely personal benefit to the superior; for example, a sheriff who uses guards and inmates to construct improvements on his residence or the professor who uses university-paid research assistants in pursuing an independent consulting business. White-collar crimes also may involve control of symbols, as in failures to make required disclosures regarding securities offerings or consumer products. The sale of counterfeit or stolen securities or misappropriated property represents a crime where there is access to things which presents or creates the opportunity for white-collar crime.

Many, perhaps most, white-collar offenses involve control of combinations of such elements. A manufacturer of adulterated food controls the materials and people involved in the manufacturing process, the information provided purchasers, and may "doctor" books to hide the true amount of gain.

In many of these mixed cases, the focus of the definition of violation is often on one of the three elements, however, so that it will often be possible to apply the distinctions in a clear way in gaining representation of diverse classes of data in the sets we will examine.

We have also at earlier points in the discussion touched on the status level of the position occupied by the offender as affecting definitions of seriousness of the offense.

Social Organization of Opportunities for Victimization and Offending

The social organization of opportunities for victimization and offending is closely linked, to be sure, to the conception of measures of risk of victimization and of detection of offending. Violations of law can be classified in terms of differential opportunities.

First, one of the ideas underlying conceptions of white-collar offending is that the opportunities are inherent in a particular occupational role or in the way that roles are socially organized and practiced. Gilbert Geis (1974), for example, speaks of avocational crime, by which he means that persons who commit crimes in an occupational role do not regard the law-breaking as their primary activity but as an adjunctive or auxiliary activity that is engaged in or facilitated by their occupational skill or expertise. Thus, an accountant who embezzles regards himself as an accountant who uses his skill in an illegal way in a fiduciary relationship. Cressey (1973) discovered three circumstances common to all trust violations involving embezzlement. These were first that the embezzler had a financial problem that was perceived as nonsharable with others, but second, he saw the violation of his trust as an opportunity to solve that problem and, third, that he rationalized the act to himself prior to its commission. Earl R. Quinney in his study of retail pharmacists (1963) calls attention to the fact that certain kinds of drug frauds arise in practicing the occupation of pharmacy. He concludes that these were more likely to occur when the pharmacist had more of a "business" than a "professional" orientation and/or when his organization was primarily organized as a business. Hospital pharmacists, for example, would be less given to such violations than pharmacists operating a general retail drug store or supermarket.

We therefore must examine data sources for the information they can provide about the roles of offenders as related to the violations committed.

Second, opportunities for white-collar crime vary among types of industry and employment, as well as among occupations. Even among government employees, for example, there undoubtedly are great differences in risk of corruption by agency. Certain departments of government present greater structural opportunities and pressures for their employees than others. Of considerable interest is the extent to which organizations differ on the development of proactive means for monitoring potential white-collar offending by their own personnel as well as by their clienteles.

Third, governments generate opportunities for law violation by providing program assistance and funding. The CETA, food stamp, and welfare benefit programs, for example, generally provide opportunities for both provider and recipient fraud.

Fourth, regulatory and enforcement agencies vary considerably in their statutory, administrative, or operating mandates to enforce the law. These mandates, in turn, provide opportunities for law violation by members of the organization. Indeed, one can classify enforcement and regulatory agencies in terms of the opportunities they offer for white-collar offending. Since agencies differ in these opportunities, the possibilities of internal and external audit must be investigated in terms of different types of opportunities.

One of the reasons for examining opportunities for law violation is to develop categories of enforcement problems arising from opportunities for white-collar offending. Thus enforcement or regulatory activities such as licensing, inspection, contracting, purchasing (a special form of contract) and registration may provide quite different opportunities for employee violations than do activities based on providing welfare services, though both may provide similar opportunities for potential offenders outside the organization. At the same time, enforcement activities may differ in the opportunities they present for potentially offending organizations. Bribery, for example, may be more characteristic of the licensing, inspecting, or contract relation, while some types of fraud will be more characteristic of service granting organizations. An interesting question to pursue is whether regulatory agency opportunities and violations differ substantially from the opportunities and violations of those they regulate. Clearly where collusion (conspiracy) is involved, the offenses are in common, but not all violations involve collusion.

While we have focused on differences in opportunities to commit white-collar offenses, less attention ordinarily is given to factors affecting opportunities to detect white-collar offense either when or after they occur.

Two major types of factors affect detection. One type deals with the law enforcement strategies of detection and a second deals with the strategies offenders adopt to thwart detection. Here the focus is on those aspects of situations and organization that provide opportunities for offenders to thwart detection.

The literature on white-collar crime is replete with references to characteristics of systems that provide opportunities for thwarting detection of white-collar

offenses. The implication is that traditional crimes are less easily covered and more easily detected than are white-collar crimes. We know that ordinary crimes against persons are more likely to be cleared by the arrest of a suspect than are property crimes, partly because victims have seen and can identify the perpetrators of crimes against them. And it undoubtedly is correct to say that it is more difficult to trace offenses involving computer-based than ledger-entry accounting systems, even though both involve the same white-collar infraction. Yet there are little data to prove there are greater differences between these major crime domains than within them.

There are, of course, special offenses for usefully thwarting intelligence on offenses that have occurred. These include offenses for destruction of evidence, perjury, suborning, obstructing justice and violation of oath of office. Whether such offenses are commonly encountered or charged and when they occur is of special interest. Such offenses are typical of some occupations and not others. Both lawyers and accountants more often than others are involved in these offenses.

The relevance of examining opportunities to thwart detection and processing of offenses is that the entry, growth, and development of strategies or opportunities may account for trends in some white-collar indicators of crime and for the relatively low frequencies or absence of certain kinds of offenses where the presence of opportunities to commit the offenses leads to the expectation of frequent offenses.

Comparison with Other Definitions of White-Collar Crime

Since Edwin Sutherland first minted the term "white-collar crime" in his Presidential address to the American Sociological Society in 1939 (1940:1), there have been numerous attempts to redefine it based on its perceived shortcomings, theoretically and empirically. There is little purpose in our reviewing these criticisms and redefinitions in any detail here since there are a number of cogent reviews of the literature. Rather we shall begin with a brief recapitulation of the major criticisms of Sutherland and related definitions of white-collar crime as set forth most recently by Shapiro. The discussion will then move to some comparisons of our proposed definition with a number of recent working definitions of white-collar crime. These comparisons are neither extensive nor exhaustive, serving only to highlight ways that our proposed definition differs from others in current use.

We begin by summarizing some of the major shortcomings that Shapiro (1976:1-36) calls attention to in her review and offer comment upon how our proposed definition relates to these criticisms.

First, much previous work has called attention to the fact that Sutherland's definition is imprecise in defining socioeconomic status and "white-collar," but more importantly that including social status as a defining element confounds the definition with a variable property of all crimes. There seems almost universal agreement on this matter and we concur. Our main reason for arguing that it be separated from the definition, however, is that some major theories about crime treat socioeconomic status as a causal variable. To include status as an element in the definition then is to confound description with theoretical explanation and render tests of any theory including status as an explanatory variable problematic.

Second, it is contended that definitions defining "white-collar" in terms of occupational role are deficient and imprecise. They ordinarily do not permit the operationalization of occupation independent of "criminal occupational roles" and must rely upon subjective criteria to specify what occupations are to be included in the set denominated "white-collar."

This second criticism is closely related to a third: that the qualification of occupational roles by the legitimacy of the organization's status in which they are embedded is difficult of operationalization and offenders in fact may manipulate "legitimacy" as an element in their offense--a form of misrepresentation.

We do not define "white-collar" in terms of occupational role which indeed we wish to vary independent of any definition. Rather we define white-collar in terms of position. It is the use of a position of power, influence, or trust--elements that for individual actors depend upon how occupations are organized both within and among organizations--that is a critical defining element in our definition. Position applies to organizational as well as individual actors.

Like Shapiro (1976:10) we recognize that the criterion of "legitimacy" may have some difficulty of operationalization, but we do not reject any concept per se solely on grounds of difficulty of operationalization. We have two purposes in focusing on the property of legitimacy of the violator's position. We wish to separate white-collar from organized or underworld criminal organization where organizations are illegal. This distinction affords one of the major bases for distinguishing white-collar law-breaking from "organized crime." And second, for similar

reasons, it excludes offenses where position is used in or by illegal organizations to disestablish the legitimate political order, a subclass of political crimes, from being treated as white-collar crimes.

A fourth caveat is that many definitions of white-collar crime use intent as a defining element, an element that requires detailed knowledge of acts and their perpetrators to be operationalized and that distinguishes among acts that are identical in all respects other than motivation (Schraeger and Short, 1978:409).

Although our definition of white-collar crime excludes intent as a defining element, it seems apparent that we cannot avoid altogether using some of the elements used to infer "intent" when operationalizing "use" of a violator's position and in operationalizing "purpose" as gain. To be sure, where the actors are individuals, each of these terms can be operationalized independently of an incumbent's "motives," but the procedure must link "use" to "illegal gain," an element we have denominated as "purpose." Purpose need not imply any particular structure of motivation that is idiosyncratic to the violator. As examples in which the violator is a person, the illegal gain may be desired for paying gambling debts or for a child's education. To take an organizational example, safety rules may have been ignored because the organization was in bankruptcy reorganization and sought by ignoring rules to increase its profit margins. When it is established that there was illegal gain, its link to the use of position will imply purpose in the sense of an object or result aimed at--a teleology if you will--but no unique individual actor motivation or intent that necessarily sets the actor apart from others with similar "purpose."

It likewise should be clear that the use of "purpose" always refers to organizational as well as to individual actor behavior. The use of organizational position for illegal gain by organizational actors is a matter of purpose or goal orientation. When two or more organizations "agree" to fix price, there is "intent" among the organizational representatives reaching agreement. When it is demonstrated that price is 'fixed,' such agreement may be entered as evidence, or collusion may simply be inferred from the market structure of prices. In any case, the specific evidentiary criteria constituting 'proof' of defined matters will vary depending upon the nature of legal proceedings or upon the specific operations developed by the social scientist. Our "intent" in the definition is to exclude operational criteria that would separate identically structured acts on the basis of individual or organizational actor purposes in illegal gain, focusing solely on for illegal gain.

One other matter is worthy of note in this connection. It might seem that on the face of it one could simply determine whether illegal behavior had occurred and focus then on some types of behavior as by definition white-collar. We have rejected that approach precisely because it tends to focus on properties of events without regard for their actors, a matter that should be clarified when we consider specific definitions below that follow that approach.

A fifth argument regarding common definitions of white collar crime is that many of them confuse persons and organizations as units of analysis, with the main criticism being that the confusion tends to reify organizations as actors.

We believe that our definition avoids any such confusion while making it possible for both individuals and organizations to be defined as committer of white-collar violations of law. Each of our terms in the definition should apply to organizations as well as individuals. Which units one chooses in analysis can be open in terms of a classification of violators by their individual and organizational actor properties (Reiss, 1966). These matters are treated more fully in the chapter on barriers to the collection of information on white-collar law-breaking.

Since other criticisms relate to specific definitions, we turn next to consider them. The definitions are selected because they provide distinct alternatives to the one we have proposed.

One of the major departures from conventional definitions of white-collar crime is represented in the writings of Geis and his concept of "avocational" crime (1974). Geis distinguishes avocational from other kinds of crime on the basis of three components: the self-image of the offender, his sources of income and status, and his deterrability (1974:279). Geis argues that avocational criminals have a self-image ". . . as a law-abiding and decent citizen. . ." (1974:274), that they derive most of their income from legal behavior (1974:275), and that they are particularly amenable to deterrence when sanctioned (1974:277).

We recognize that each of these elements--self-image, source of income, and deterrability all are matters on which violators will vary. But there are rather powerful theories about what causes each of these to vary as properties of offenders and of offending. To choose but one example, sanctions are thought to have both general and specific deterrent effects. Geis's formulation of Sutherland's white-collar offender at most covers specific deterrence but it does so by definition. We would prefer to allow each of

these elements--self-image of offenders as criminal or law-abiding, the legality of sources of income, and the amenability to deterrence--be made problematic in an explanatory theory. How illegal sources of income are turned into legal ones, for example, is problematic not only for white-collar but for organized crime. Here, then, as in the case with some other defining elements, we choose to free the definition from properties that are rather powerful variables in explanatory theories about law violation, the deterrence of law-breaking, or the structuring of illegality.

A radically different approach is taken by Edelhertz where the role, status, and self-image of the actor are essentially ignored. Edelhertz defines white-collar crime as:

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

There are five major elements or components of white-collar crime according to Edelhertz (1970:12; Edelhertz and Walsh, 1978:11):

"Intent to commit a wrongful act or to achieve a purpose inconsistent with law or public policy;

"Disguise of purpose or intent;

"Reliance by adversary on ignorance or carelessness of victim;

"Acquiescence by victim in what he believes to be the true nature and content of the transaction;

"Concealment of the violation 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 provision for restitution to or other handling of the disgruntled victims, or (3) creation of a deceptive paper, organizational, or transactional facade to disguise the true nature of what has occurred."

The principal way that Edelhertz's definition differs from ours is in focusing white-collar crime around a particular choice of means. Not only are the use of any violent or coercive means rejected but the operant means are "nonphysical," "concealment," or "guile." Apart from difficulties in operationalizing these means under the law, we regard it as unfortunate that the "choice of means" in

illegal gain become the differentiating characteristic in offending. Not only does the restriction of means to those selected by Edelhertz tend to bias the selection of events toward class difference in violation but the restriction ignores the fact that organizations as well as individuals may opt for different means under different circumstances to achieve the same purpose. What is treated as a means under some circumstances becomes an end under other circumstances with a different means used to attain it. Unless each of those means meets Edelhertz's "means test," the event will not be classified as a white-collar crime. This should be particularly troublesome for Edelhertz, since he treats a "series of illegal acts" as white-collar crime. An organization as well as an individual, for instance, may choose violent means to maintain secrecy or to protect from disclosure. The illegal gain that began with concealment ends up being protected by means that Edelhertz excludes as white-collar crime. Either this poses difficulties in classifying events where activity is patterned in series of occurrences or one may have to treat events as discrete elements, each of which is tested for its adherence to the definition.

Put another way, we opt to have the elements in events vary, focusing on the relationship between the use of a position in a legitimate order for illegal gain whereas Edelhertz opts for defining events in terms of a class of means used in illegal gain without regard to their organizational purpose. Thus, any distinction between organized and white-collar or white-collar and political crime breaks down when the sole criterion for the distinction is the choice of means. Voter fraud, deceptive pay-offs in the numbers, and fraudulent stock issues by a Wall Street firm all are white-collar crimes for Edelhertz while they are political, organized, and white-collar crimes by our definitions.

A third, and again, rather different approach from ours is that followed by Shapiro (1976:42):

"White-collar crime is generally defined, (then) as transactional property violations in which a) the means by which property is secured (misrepresentation) is proscribed (transactional violations) or b) transactions are proscribed because they are thought to victimize third parties (violative transactions)."

Shapiro, like Edelhertz, focuses on the means used and the imputed consequences of acts. Our definition, as already noted, opts for allowing choice of means to vary (even though 'choice' is not an essential element in the definition). But it seems to us that Shapiro's definition has the disadvantage of mixing two sets of criteria--one related to the choice of means and a second related to

belief systems as institutionalized in the law. There is nothing bridging these two criteria other than that they are two of an unstated member of varieties of transactional property violations.

The definitions offered by both Edelhertz and Shapiro have an advantage that is generally lacking in our definition. In general, their definitions follow rather more closely particular legal definitions of violations. This means that using their definitions the development of social indicators of white-collar crime can rely more heavily upon current legal definitions. At the same time, such restriction will exclude all instances where the class of crime fails to qualify.

Our proposed definition encompasses a much broader range of categories of crime. For some of them, such as the common crimes of homicide and aggravated assault, only a relatively small proportion would be classified as white-collar crimes under our definition. For others, particularly those where compliance is an objective and penalties not invoked if compliance is attained, a substantial proportion will be classified as violations but a substantial minority will not. For still other classes of crime, e.g., false advertising, most instances might qualify under our definition. We would leave as problematic, thus, the relationship between legal categories of crime and our proposed definition. These are treated as problems in matching current data from legal categories with our proposed definition of white-collar crime.

In his original paper on white-collar crime Sutherland noted that the two major classes of crime differed primarily in the implementation of the criminal law. He wrote (1940:8):

"The respect in which the crimes of the two classes differ are in the incidentals rather than the essentials of criminality. They differ principally in the implementation of the criminal laws which apply to them. The crimes of the lower class are handled by policemen, prosecutors, and judges with penal sanctions in the form of fines, imprisonment, and death. The crimes of the upper class either result in no official action at all, or result in suits for damages in civil courts, or are handled by inspectors, and by administrative boards or commissions, with penal sanctions in the forms of warnings, orders to cease and desist, occasionally the loss of a license, and only in the extreme by fines or a prison sentence. Thus, the white-collar criminal are segregated administratively from other criminals, and largely as a consequence of this are not regarded as real criminals by themselves, the general public, or criminologists. This difference

in the implementation of the criminal law is due principally to the differences in the social position of the two types of offenders."

Although elements of this characterization are apparent in the definition by Geis, they are most evident in the approach taken by Katz (1979). Katz contends that what distinguishes white from blue-collar offenders is the enforcement process, i.e., how offenders attempt to evade the enforcement system. "White-collar" crimes then are ones:

"... where white-collar social class position is used (1) to diffuse criminal intent in ordinary occupational routines so that it escapes unambiguous expression in any specific, situated behavior; (2) to accomplish the crime without incidents or effects that can be taken officially as presumptive evidence that a crime has occurred before the criminal has been identified; and (3) to cover up the culpable knowledge of participants through concerted action which creates for each a position of strategic ignorance."

Quite clearly, offenses will vary in the extent to which they are open to detection and proof. Katz's approach differs from ours in that his definition focuses on how position is used to affect the differential application of law through law enforcement while we treat these as matters in the mobilization of law enforcement, examining how differences in position affect the detection and sanctioning of white-collar crimes.

Plan of the Report. Although our proposed definition departs from conventional ones of white-collar crime based on legal categories, the social status of offenders, and their detection and processing in criminal justice systems, our treatment of statistical sources of information on white-collar law-breaking that follows is in fact relevant to most definitions. For our approach to the measurement and statistical reporting of white-collar law-breaking begins with an appraisal of current statistical sources in federal agencies and the requirements that must be met for a uniform system of reporting. From this assessment, we proceed to a more general treatment of the role of statistical reporting in social control and conclude with a treatment of research that is needed to develop information systems on white-collar law-breaking.

II. SOURCES OF INFORMATION ON WHITE-COLLAR LAW-BREAKING

There is a common presumption in the literature on crime that there is little available data pertinent to white-collar crime. Indeed, A Framework for Planning U.S. Federal Statistics concluded: "... no data are routinely collected on 'white-collar crime'." (U.S. OMB, 1977:157). Our investigation led to a somewhat different conclusion. There are many and diverse sources of information on white-collar violations of law. The number of relevant, routinely collected data sources is great. Yet when taken individually, each presents problems of adequacy, interpretation, and use. When taken collectively, they pose substantial problems of collating the separate sources of information and fall far short of constituting a comprehensive information system on white-collar crime.

Much case information on white-collar law-breaking is not very accessible to statistical reporting, either because it is private or confidential at law or because an agency so regards it. To obtain this information often elaborate agency procedures must be followed or access requested under the Freedom of Information Act. Much information stored in automated data processing systems proves upon inquiry to be as inaccessible to persons outside the system as that retained in original case files containing privileged information. This is so because the agency stores information with unique identifiers that must be removed prior to its release, a procedure that may occasion considerable delay. Problems of the accessibility of data often, however, are secondary to those of their amenability to useful aggregate or statistical reporting on white-collar crime. This is so for many different reasons, including the raw form in which many data are kept, the procedures for classifying violations of law, the quality of the information reported, and the relative lack of information from other than law enforcement sources.

Modalities of Information on Crime

Systematic official government intelligence about crime is socially organized by three major modalities of intelligence gathering: the administrative record of investigations and decisions about them, sample surveys to detect compliance or violations of law or standards, and the audit of administrative or survey information systems. These modalities are not restricted by function, such as by a presumption that administrative records are management information systems while sample surveys are not. A management system may include all three modalities as parts of an integrated system of intelligence gathering and assessment. How some agencies currently use all three of these modalities as sources of intelligence on white-collar

crime is illustrated by a brief description of the information systems of the Consumer Products Safety Commission (CPSC) and the Internal Revenue Service (IRS) of the Department of the Treasury.

The CPSC uses a sample survey, the National Electronic Injury Surveillance System (NEISS), to detect product violations of safety standards. NEISS is a sample survey of injuries treated at a sample of hospital emergency rooms in the United States. Aggregation of this injury information by product and manufacturer is used to detect, seek compliance from, and sanction violators of the Consumer Product Safety Act (PL 92-573; 86 Stat. 1207). An audit of the data quality of NEISS and the compliance of hospital personnel with the survey standards is conducted by evaluation visits to each hospital at least four times each year. Additionally, CPSC maintains a case tracking system that follows reports of violations from investigation through compliance and enforcement, entering information on violations from all sources of complaint or detection. Audit of the coverage in this system is undertaken for all product-related deaths by using the death certificate files of coroners and the information in the Medical Examiners' and Coroners' Alert Program (MECAP).

The management information system program of IRS that is basic to the investigation of violations, particularly criminal investigations, is the Integrated Data Retrieval System (IDRS) that as yet is not fully operational. Three components of IDRS are of special interest here. One, essentially a management information system of enforcement actions,--the Terminal-Based Case Management and Time Reporting System (CM & TRS)--is an on-line, continuously updated data base " . . . to track the progress of cases and projects, to accumulate time on investigations and other Criminal Investigation activities, and to summarize data for distribution to all management levels" (MT-9570-16:110). Other files deal with sources of taxpayer income and individual income tax returns. The source file is used as a base for detecting unreported income. Moreover, every return--individual, partnership, and corporate--is audited for accuracy of calculations. In addition to IDRS and its components, IRS periodically undertakes sample surveys under its Taxpayer's Compliance Measurement Program (TCMP). Separate phases of TCMP have estimated compliance in filing of taxes and accuracy of reporting on filed returns. The latter involves a sample of returns that are subjected by some independent means of verification to an intensive audit of all information in the return.

These two examples from CPSC and IRS illustrate not only that each of the major modalities of intelligence on white-collar crime can be part of an information system of a single operating agency, but also that each modality

potentially can be used for different intelligence purposes. The TCMP sample surveys, for example, could be or are used by management to detect violations, to set resource allocations for audit of taxpayer returns, and to develop selection techniques to screen tax returns for audit.

Each of these modalities for gathering information is reviewed in this report. We begin with a review of official government reporting systems, move to a consideration of some private reporting systems, and conclude with an examination of survey systems, particularly as they provide means for estimating unreported white-collar events. More detailed attention is given to government administrative and audit systems later in the report.

Official Reporting Systems on White-Collar Crime: Their Variability and Limits

The major modality for any official reporting system is the administrative record. We mean by an administrative record data generated in the ordinary course of agency operations and, generally, aggregated for administrative, management and public accounting purposes. All government agencies, by law or by regulation, must keep track of at least some aspects of what they do and of the materials they process, though which aspects of administrative function are systematically counted ordinarily is discretionary with each administrator.

The generation of statistical information on white-collar law violations is usually not one of the main purposes in generating administrative records. Nevertheless, administrative records of federal agencies often contain a great deal of such information. An agency, for example, may keep track of the complaints that come to its attention, violations detected, administrative penalties assessed, referrals for prosecution, and so forth. Within many agencies, thus, there is a rich data base for the study of white-collar crime and of the administrative reaction to it. Moreover, the rhythms of administration and the requirements of public accounting, such as the cycles of the fiscal year, generally lead to the production of time series. As administrative processes are routine, so the production of data is routinized.

Without exception, every federal agency is obliged to make publically available certain information that is amenable to statistical reporting. This is so because under the Freedom of Information Act (5 U.S.C. 552) information held by Federal agencies must be " . . . available to the public unless it comes within one of the specific categories

exempt from public disclosure."¹ These exemptions are narrowly construed, and in addition, even records which contain exempted information must be disclosed after deletion of exempt materials. Recent amendments to the Act as well as case law make it clear that whenever statistical information is requested, whether that in case files or on tapes, it generally is regarded as "public information." Case and aggregate case information resulting from executive or judicial processing of matters usually is available for criminal violations of law, but somewhat more of the matters pertaining to the violation of federal regulations or civil laws are treated as private and therefore less accessible to statistical reporting. Nonetheless, unaggregated information generally is available after deletion of identifying details or after it becomes a matter of court record. Even administrative case information with identifiers is typically available (5 U.S.C. 552 b(7)). Still each agency or commission initially determines what it regards as non-public information, leaving to litigation a determination of its right to treat it as such. Moreover, under FOIA there are specific exemptions. The FTC, for example, includes in its category of legally permitted non-public information data from FTC medical and personnel files, trade secrets submitted by businesses (such as customer names), deliberative portions of correspondence, and records of pending investigations that might interfere with the investigation if disclosed (FOIC, 1979:2).

The law, however, is not particularly germane to the development of a statistical reporting system on white-collar law violations since the costs of acquiring, processing, and merging information from the many agencies for which it can become available would be prohibitive were one to attempt to develop an adequate reporting system without the assistance and cooperation of the agencies that generate it. Our concern, thus, lies as much with what is currently available as with that which could become available in an institutionalized system of social reporting on white-collar crime. Questions of availability are the ones primarily addressed in what follows.

Sources of Variability in Official Government Reporting of White-Collar Violations of Law

The kind and quantity of information available from any legislative, executive, or judicial agency is the major barrier to developing a uniform reporting system on white-collar violations of law. This variability in the kind and

¹Office of the Federal Register. United States Government Manual 1978/1979. Washington, D.C.: U.S. Government Printing Office, 1978. p. 1.

quantity of available information stems from many different sources: the nature of jurisdiction over law and its violations, the history of organizational information on law violation under a particular mandate, and the uncoordinated growth of data storage and information processing and reporting systems. Given myriad sources of variability, our concern is with those that impose substantial barriers or limits to developing a uniform system of statistical reporting on white-collar law violations, or with ones that substantially affect the form such a system might take. A consideration of these sources leads quite naturally to the specification of requirements for a uniform statistical reporting system.

Jurisdiction

Sir Edward Coke (1552-1634), an English Jurist who significantly influenced the development of Anglo-American law, observed that jurisdiction is a power introduced for the public good out of the necessity of dispensing justice (1664 (1817)). With the emergence and growth of administrative law and regulation, jurisdiction has come to embrace the scope of authority, capacity, power, or right to act in executive as well as judicial matters. Were one to limit the statistical reporting on white-collar violations of law only to matters that may be adjudicated under the criminal law or those subject to litigation in the civil courts, a great many transgressions of law--many similar to those litigated or adjudicated--would lie outside the statistical reporting system. The volume and consequences of white-collar matters decided by administrative law judges easily outweigh those decided by civil or criminal court judges and matters detected by regulatory agents and resolved by discretionary decisions of their agencies often loom larger than those detected by criminal enforcement divisions and adjudicated as criminal matters. Line tax agents of the Internal Revenue Service, for instance, detect a far larger number of matters that are handled as violations of law than does its Criminal Investigation Division (Long, 1980:Table 5.4). No uniform threshold of seriousness of consequence or gravity of legal or moral offense governs the enforcement choices by the various agencies and agents charged with the task of insuring that the organized activities of the nation conform to law. Although statistics on white-collar violations might be reported separately for criminal, civil, and administrative jurisdictions, a uniform and comprehensive system of statistical reporting on white-collar violations of law should embrace all three. A first requirement for a uniform statistical reporting system then is that the jurisdiction comprise administrative, civil, and criminal matters classified as white-collar violations. The fragmentation of jurisdiction in the United States imposes barriers and limits to uniformity in statistical reporting in yet other

ways. Among these are the overlap in jurisdiction among executive and judicial agencies, as well as the responsibility for statistical reporting among legislative, executive, and judicial agencies. Each of these overlaps creates long- as well as short-run limits to a uniform system.

The federated system of law and justice in the United States poses important problems for statistical accounting over time where there overlapping and concurrent jurisdiction of federal and state authority. State authority, itself, is further fragmented by the delegation of some state powers to local authority, though these are generally of less consequence for reporting on white-collar violations of law. Among the major problems generated by our federated system of jurisdiction generates four major problems for uniform statistical reporting of white-collar law-breaking.

(1). Major changes in law and its administration have consequences for the statistical series of parallel or related federated units. Whenever one unit shifts its law or enforcement and disposition policies or practices it may affect the matters of other units with concurrent jurisdiction. This is particularly true for federal and state statistics where shifts in federal policy and practice are likely to have a profound impact on the time series of both federal and state units, while the reverse is perhaps less common. In either case, however, the impact renders merging federal and state statistics problematic. Recent examples show how such shifts can affect both ordinary and white-collar crime statistics. The FBI has reduced its investigation of bank robbery cases and federal prosecutors have altered the effort devoted to prosecuting these cases so that resources might be freed for the investigation of white-collar violations of law. Such a shift puts the burden of these cases largely on the states, thereby affecting the federal series on bank robbery, including offense series collected by the FBI and the federal prosecution and court statistics on bank robbery. Just where and how this shift in policy affects time series of white-collar crime violations is more difficult to determine, although some impact may well be expected. Such shifts perhaps can be documented more clearly by examining changes in local FBI enforcement and local federal prosecution office statistics than from statistics aggregated at the federal level. Federal and state statistical series likewise may be complementary as well as disjoint or overlapping. This is in part the case for federal and state statistics on environmental pollution which reflect differences in modes of detecting pollution. The detection and monitoring of point-source violations are more often state matters so that the dumping of hazardous chemicals and other pollutants lies with localities within

states while much of the air pollution problem and its control seems to lie well beyond state interests and capacities.

There are both short- and long-run solutions to these reporting matters. In the short-run, one can attempt to monitor all changes in legislation and administration that affect relevant statistical series and observe their impact on those series. In the long-run, however, one would want to examine the impact of change on the statistical reporting of such events for the aggregate of all affected units. The import of these observations should be clear. A second requirement of a uniform reporting system then is that at least in the short-run one must monitor the changes related to overlapping and concurrent jurisdiction for their potential impact on statistical series and attempt to take them into account in explaining variation over time. Note that these sources of effect are external to the jurisdiction; we shall have occasion to refer to a similar effort from internal sources of variability.

(2). Variation in the definition of violations of law and of the powers of enforcement, as well as of how matters are detected and processed as legal matters in a federal system, has an enormous impact on statistical series of white-collar crime. The point requires only adumbration, since it is well known in conventional crime statistics that the classification of major crimes against the person and property varies considerably among state and federal statutes; hence, uniform classification in the Uniform Crime Index results from reclassification of events, changing them from the statutory to the uniform crime classes.

The problem is exacerbated were one to attempt to classify events as white-collar violations since not only is there considerable variation among the states in the legal definition of white-collar crime classes, such as fraud, but also some major crimes against persons and property, such as homicide and arson, can be classified under some circumstances as white-collar crimes. Clearly, a third requirement of a uniform statistical reporting system on white-collar law violations is the adoption of standard definitions and classification procedures for events regarded as white-collar violations to overcome statutory variability in defining them.

(3). Within the federal system, there exist both concurrent and overlapping jurisdiction among federal departments and executive agencies within the executive branch--a situation that can give rise to difficulties in counting and classifying events since these agencies are not bound to follow uniform rules and practices. A good example is found in antitrust and anticompetitive law and its enforcement. The Congress gave concurrent jurisdiction

to the Antitrust Division and to the Federal Trade Commission in the enforcement of the Clayton Act. Although the Antitrust Division of the U.S. Department of Justice has responsibility for coordinating enforcement between the FTC and the Division, both agencies may undertake separate proceedings involving the same event. There similarly is overlap when the Antitrust Division undertakes both Civil and Criminal proceedings. One can expect, moreover, that for all referrals from the FTC to the Antitrust Division for criminal prosecution, there may be differences in counts, particularly when the Division decides against criminal prosecution and the matter is referred again to the FTC. The same events then can be counted and classified in different ways because of concurrent jurisdiction and because the law allows both civil and criminal proceedings for the same events. To avoid these problems, a fourth requirement of a uniform reporting system on white-collar law-breaking is that ways must be found to estimate or account for multiple counts of the same events.

There are some special problems of obtaining exhaustive statistics on federal prosecution and adjudication of matters involving white-collar law violations that stem from the independence of jurisdiction on the same matters. The federal government provides for a number of independent prosecution and judicial systems. While civil and criminal matters are prosecuted and adjudicated for the most part in the 94 federal judicial districts, there are a number of special courts such as the U.S. Tax Court and the U.S. Customs Court that also handle white-collar matters. Procedures for classifying and counting matters are by no means uniform across these courts. What is more, customs and tax matters are handled in both general and special judicial systems. Thus, if the intent and purpose is to look at a class of violations within a particular statutory area, e.g., customs, one would need to develop uniform procedures for aggregating statistics across more than a single court system.

(4). The nature and boundaries of the universe within which white-collar violations are to be counted is problematic for a uniform reporting system. Problems arise as to whether all offenses that are violations under American law and their offenders and victims shall be included or whether some shall be excluded and whether the violations of the laws of other countries by American citizens and their organizations shall be included. A universe of law violation can be defined in terms of a number of combinations of legal jurisdiction, their resident and non-resident populations, and the place of occurrence of events, where these are germane.

On first reflection, there appear to be reasonable grounds to exclude all offenses of U.S. nationals and their organizations that occur within a foreign jurisdiction unless they are at the same time violations of U.S. laws. It would seem arbitrary to count as a violation an action that depended solely on a particular foreign country or group of them. Moreover, one would have to rely very heavily upon such countries for intelligence on violations of law since our own systems are poorly organized to detect violations abroad. To be sure that problem of detection of violations by U.S. Nationals abroad inheres in some classes of violations of U. S. law, e.g., bribery of foreign nationals or corporations by American subsidiaries or their corporate headquarters, but the problem is a relatively limited one.

Still the exclusion of all such violations can raise questions about the deliberate circumvention of U.S. law by U.S. nationals or by domestic organizations. It often is alleged by Third World Countries, for example, that multinational corporations deliberately commit actions outside their home or headquarters country that would be a violation of law if done within its boundaries.

A special problem arises with respect to the counting of cases involving violations of U.S. law by foreign nationals or of corporations under U.S. jurisdiction. Ordinarily such nations, organizations, or foreign nationals are not counted as part of the base population for the computation of violation statistics. Foreign corporations, for example, are not typically counted as part of the numerical base of U.S. corporations. Nonetheless, it is quite common for an enforcement agency to include violations by foreign corporations within a count of enforcement actions. The Antitrust Division of the U.S. Department of Justice, for example, includes cases against foreign corporations within its statistics on prosecutions. The number of such violations by foreign organizations may be consequential in a given case. A recent report of the Japan Trade Council, for example, noted the following:

"In general, the Antitrust Division has become more active in prosecuting foreign commerce cases, and the decisions have tended toward wider applicability of the antitrust laws. During the 1930's, only nine cases initiated by the Justice Department involving foreign commerce were decided by the courts; during the 1960's, the number rose to 44." (United States Japan Trade Council, 1979:2.)

The report goes on to say that during the five year period from 1974 to 1978 there were 2,897 antitrust decisions by the Department of which 1.7 percent were against identifiable Japanese companies. Quite obviously, the number of cases involving foreign corporations must be much

larger than this 1.7 percent, assuming other foreign corporations also violate U.S. law, but how and in what way these violations should be counted and for which base population their rates should be calculated is less clear. There may well be variability among federal agencies in how violations of foreign nationals and organizations are counted and whether they are included in statistics on violations.

A very special case for exclusion from the universe of potential violators is the Armed Forces population, whether resident or overseas. Both the resident and overseas Armed Forces populations are subject to American military law and the military can exercise jurisdiction for all their violations committed on military installations whether within the continental U.S. or overseas, including offenses of the same types as are the frequent business of civil prosecution. Statistics of violations by the American military are ordinarily reported only for violations under the military code of law and as adjudicated by military courts. All other violations by personnel are reported in the statistics of the United States or a foreign country, depending upon what options a foreign country uses to report these violations and whether or not it can identify the perpetrator by citizenship. To complicate matters further, white-collar offenses involving a military person and a civilian, e.g., in a bribery case, may be adjudicated under two different codes and courts. Regardless of the rule adopted for counting cases involving military personnel and organizations, there is no simple way by a uniform standard to count which cases are included and which are not.

A fifth requirement for uniform reporting, then is that there be a clear definition of the universe with decision rules stipulating which white-collar law violations are to be counted (whether the universe is defined by jurisdiction over events, by the territory of jurisdiction, or by special qualifications regarding the population of a jurisdiction). Counts could be made, for example, for the events that fall within American law and its exercise of jurisdiction.

We have observed repeatedly in this section that our federated system of jurisdiction reduces comparability among the statistics from different jurisdictions. Yet the current state of our knowledge about the heterogeneity introduced into statistical reporting from statutory, executive, and judicial sources is too limited to take variability among reporting jurisdictions systematically into account. We are particularly limited in gaining knowledge about state and local variability since few states have as yet organized their local into state reporting. For that reason alone we decided to pursue a limited strategy of

focusing on federal statutory and regulatory codes and their implementation. Sources of variation are fewer and more subject to examination.

There are additional reasons for focusing on federal violations of the law in explaining the problems of statistical reporting of white-collar law-breaking. Although there are more civil suits and more criminal cases in state and local than federal courts involving white-collar law-breaking, their diversity is greater in the federal system. These federal cases, moreover, cover areas that are generally of less significance at state and local levels, e.g., criminal antitrust, or they are exclusively federal matters, e.g., federal elections.

But, there are shortcomings as well in limiting our initial inquiry to federal statistical systems. We shall be unable to determine not only the extent to which state and local statistical problems and issues mirror federal ones but those that are unique to these levels of government and their reporting systems. We shall learn less, moreover, of the kinds of white-collar law violations that are endemic in state and local systems, e.g., those involving real estate transactions or professional practice. These are matters for exploration in later research.

The Organization of Statistical Reporting

The kind and quality of information available on white-collar law violations will depend upon the way in which the collection, processing, and dissemination of information is organized within a federal statistical system. Matters pertaining to a federal statistical system have been under periodic review since the 1930's and it is not our intention to review all of those limits here. Rather, we shall draw attention to a number of factors that have special relevance for information on white-collar violations. Among them are the accessibility of information as public information and the organization of aggregate reporting systems within agencies.

Organization of the Reporting of Information to the Public

Most federal statutes establishing agencies that collect and process information as well as the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (PL 93-579) provide protections for information that uniquely identifies individuals or organizations. Most agencies thus not only have statutory protections against public disclosure of uniquely identifiable information, unless disclosure is mandated below, but they also have statutory protections in most cases against sharing uniquely

identifiable information with other agencies. Although the sole interest in statistical reporting lies in aggregated information rather than in unique cases, unique identification of information is essential if one is to merge information about the same individuals or organizations across agencies. It is not necessary that such identification be public information, only that each agency be obligated to share information about the same individuals and organizations so that careers may be tracked. A sixth requirement of a uniform system of statistical reporting, then, is that there be provisions for requiring agencies to report and to do so in ways that permit the merging of information about white-collar violations.

Organization of Reporting in the Executive Branch

It is virtually impossible to know about all of the specific sources of information on white-collar crime within the Executive Branch. This is so for a number of reasons.

First, there is no central information system for all executive departments and agencies. The Executive Branch consists of The Executive Office of the President and of the Vice President of the United States, twelve departments at the sub-cabinet level, and sixty agencies including four quasi-official agencies. Within all of the Departments and within a large number of the agencies, there are administratively autonomous sources of information on white-collar violations of law. There is no uniform way of organizing these functions for reporting on law violations even within a single executive department, much less within all of them. Thus, the only way one can determine what statistical information on white-collar law-breaking is possible to get or is available is to undertake an intensive and complicated search within each department or agency.

Second, there is no exhaustive catalogue or guide to Federal Statistical reports, (much less of information systems amenable to statistical use). Some assistance in obtaining information on white-collar crime is available in the Guide to Publications and National Office Reports Catalogues issued, as required by the Congress, by all executive departments and their bureaus, and by independent agencies. Unfortunately, these official publications fail to specify the kind of information available in such a way that one can readily locate published information relevant to white-collar violations of law. Moreover, since agencies are obliged to list only their official publications--official publications being those published by the U.S. Government Printing Office and available for public distribution--they are not obligated to list or advise the public or any other agency as to their internal reports,

many of which include statistical information on white-collar illegality. Indeed, these internal reports are most likely to contain the kind of detailed information and statistics that are most relevant to the development of a uniform system of reporting on white-collar law-breaking. The major way these reports can be accessioned --apart from the cumbersome use of FOIA--is to undertake a laborious survey in cooperation with each agency or bureau.

It is not uncommon, however, for a bureaucracy to shield information from outsiders or to be adverse to expending the effort required to meet requests fully and accurately. Legitimizing sponsorship of inquiry is therefore essential, e.g., by NIJ, BIJ, or the Department of Justice. Nonetheless, each agency or branch values its autonomy highly and may refuse to cooperate in even an endeavor with Justice sponsorship.

It is possible to determine what can be made available from other sources. Thus all data collection instruments, with few exceptions, are available to the public for examination and much information is available on what is in the records of an agency and on its computer tape files. Such information is enormously useful in determining what could be utilized in statistical reporting, though it is not apt to be very helpful in learning about what statistical information on white-collar crime was compiled for past reporting or internal use. Unfortunately there is no central index of data collection instruments approved by OMB or GAO and their uses.

Third, within any department, and even within some large bureaus, there is no uniform way of organizing data collection nor is there always central responsibility for collecting, storing, and reporting information. Following recent legislation, all executive departments, for example, must have an Inspector General's office but most independent agencies have no such requirement. Moreover, there is no requirement for uniformity among these Inspector General offices. Inspector General functions often are dispersed throughout an organization. Within the Department of Health, Education, and Welfare, for example, there is an Inspector General's office with a Deputy Inspector General and Assistant Inspectors for Auditing, Investigations, and for Health Care Systems. Yet there is also within the General Counsel's office an Assistant General Counsel for the Inspector General Division. Each of these offices collects information somewhat independent of the others.

It is very difficult to trace all of the statistical systems within a large and complex department. The Department of the Treasury may serve as an illustration of how the functions of statistical reporting relevant to gathering information about white-collar violations of law

are dispersed. First, there are a number of statistical functions within the Secretary's office. Some statistics relevant to white-collar law-breaking are collected in a dozen or more offices, such as Audit, Personnel, Revenue Sharing, Financial Analysis, Special Studies, Statistical Reports, Data Services, Law Enforcement, Interpol Operations, and General Counsel.

Each of the major Bureaus within Treasury has regulatory, inspection, or enforcement functions relevant to white-collar law violations and collects and reports information pertaining to them. These include the Bureau of Alcohol, Tobacco and Firearms; the Office of the Comptroller of the Currency; the United States Customs Service; the Internal Revenue Service; the Bureau of the Mint; and, the United States Secret Service. Often divisions within each of these bureaus have more than one separate reporting system.

Fourth, even within a given agency or bureau, there can be considerable difficulty in controlling the kind and quantity of information that is collected and in gaining access to it because the collection of data and its aggregation are decentralized to regional or local offices. To return to our example of the Treasury, the Office of the Comptroller, among its other functions, exercises supervision over the operations of the national banks, including trust activities and overseas operations. Each bank is examined periodically through a nationwide staff of approximately 2,100 bank examiners under the supervision of 14 regional administrators. The Customs Service, with responsibility for administering or enforcing more than 400 statutory or regulatory requirements relating to international trade, is divided into only nine customs regions within which are 45 district area offices responsible for about 300 ports of entry (United States Manual, 1978/79:464-66). The lack of standardization for regions within Treasury is evident from the fact that IRS has seven regions with 58 district offices and 10 Service Centers, and the United States Secret Service has 63 district offices.

The foregoing problems of disparity in the organization of collection and reporting of information within a government agency or among those with a common objective suggests a seventh requirement of a uniform reporting system, a provision for central coordination of the processing and reporting of information and for control to insure uniformity and compliance.

Fifth, the availability of information on white-collar crime differs among the myriad federal agencies and divisions within departments because of considerable variation in the specification of their mandates and of

their powers to enforce the law or to regulate and adjudicate matters relating to white-collar violations. Legal mandates may be rather broad, providing responsibility for a diverse set of criminal statutes, or quite limited, as by mandating a specific legislative requirement. Moreover, there may be legal requirements for reporting. The recent legislation creating Inspector General offices in each of the executive departments requires each office to submit an annual report to the Congress. Not all agencies have such reporting mandates. Similarly, the powers of an agency or division may vary considerably. The powers of criminal prosecution are restricted to the U.S. Attorneys and the Antitrust, Civil Rights, Criminal, and Tax Divisions of the U. S. Department of Justice. Powers of litigating civil matters are given to a much larger number of departments and agencies, and many agencies have powers to adjudicate matters by administrative proceedings in charge of examiners, commissioners, or administrative law judges.

Agencies vary considerably in the way their mandate and powers are combined. Some have a quite broad mandate and substantial powers. The Federal Bureau of Investigation (FBI), for example, has a wide range of responsibilities in criminal, civil, and security matters. The FBI is charged with investigating all violations of Federal laws with the exception of those which have been assigned by legislative enactment or otherwise to some other Federal agency. Other agencies have a limited, specific mandate and powers. The Federal Election Commission (FEC), for example:

"... seeks to obtain compliance with, and formulates policy with respect to the Federal Election Campaign Act Amendments, including the Federal campaign disclosure requirements, contribution and expenditure limitations, and public financing of Presidential nominating conventions and elections." (U.S. Government Manual, 1978/79:528-29.)

The FEC's enforcement and related powers are limited to issuing advisory opinions, conducting audits and investigations, subpoenaing witnesses and information, and initiating civil proceedings. It must make its findings public. Still other agencies have no enforcement powers and are purely investigatory or fact-finding. A good example of an agency with a broad mandate is the Commission on Civil Rights which has no enforcement powers, but makes findings of fact on denials of equal protection of the laws because of race, color, religion, sex, national origin, or in the administration of justice (U.S. Government Manual, 1978/79:498). Finally some agencies have no law enforcement powers or functions except those that derive from internal administration. This is true for the National Science Foundation, for instance.

Mandates and law enforcement powers vary among agencies in yet other ways. For some agencies, regulation or enforcement is their sole or primary function while for others it is incidental. Agencies such as the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, and the Occupational Safety and Health Review Commission are given over almost exclusively to regulation and law enforcement, though their enforcement powers are quite dissimilar. Each, nonetheless, is vested, inter alia, with quasi-judicial powers. By contrast, the United States Postal Service performs no quasi-judicial functions and law enforcement is limited to detecting and investigating violations of statutes arising from interference with or misuse of its mail service. This variation both in legal mandates for specific reporting requirements and in law enforcement or justice mandates and powers leads to considerable variation in statistical reporting on matters relevant to white-collar law violations. Even though every agency is vulnerable to violations by its own personnel, it may not regard statistical reporting on such matters as remotely related to its mandate. This variability also makes any statistical reporting system based on collating available information on white-collar law violations from official reporting systems subject to underreporting, particularly of certain classes of information, e.g., on white-collar crimes by employees. It also points to our eighth conclusion: any uniform statistical reporting system on white-collar law-breaking must require that relevant violations of law, regulations, or standards be systematically and regularly reported by each and every agency, whether or not its mandate is law enforcement, regulation, or adjudication.

Despite problems created by variability in legal mandates and in regulatory, enforcement, and adjudicative powers, each agency and many department divisions are sources of referral of white-collar violations of law to other agencies. This is particularly true of referral for criminal prosecution, but often holds for civil matters as well. Each agency is, in that sense, an agent for the mobilization of legal intervention into matters. But currently the bases for, and the criteria of, referral vary considerably among agencies. Ninth, although a uniform system of statistical reporting does not require that all agencies follow the same rules for deciding referrals, it does require that there be explicit criteria for defining referrals and their sources so that referral information can be merged among agencies and their sources of variability investigated.

Finally, each agency has considerable autonomy to develop its information system, a condition that complicates or renders impossible the collation of much information on transferral cases from the separate agencies.

Administrative data collection systems are subject to certain constraints from the Office of Management and Budget (OMB) and the Government Accounting Office (GAO) as well as statutory and executive requirements about what can and cannot be collected. The OMB constraints on data collection provide for either central or delegated review and approval of all forms used to collect information from non-government sources or for inter-agency purposes. Approval is required for most internal administrative report forms of executive agencies as well, though what constitutes a form is more ambiguous in that case. Under the Federal Reports Act amendments (44 U.S.C. 3512) of 1973, GAO reviews the existing information gathering practices of independent regulatory agencies, while OMB continues its forms clearance functions for all others. Report forms designed by independent agencies to obtain information from the public must be approved by GAO. The purpose of their review and clearance is "... to ensure that information is obtained with minimum burden on those businesses required to provide the information, to eliminate duplicate data collection efforts, and to ensure that collected information is tabulated so as to maximize its usefulness." (GSA, 1978:56) The latter stipulation gives broad power to control collection from the public, but no provision is made to control collection forms on internal matters of independent regulatory bodies that fall under GAO review.

In theory, central approval for all reporting forms according to general standards: provides an enormous opportunity for central coordination and control, not only over the form and substance of information collected, but over the standardization of the form in which information is collected and reported. In practice, there appears to be more control over the form of collection than over the standardization of categories of information for reporting. This is owing in part to the fact that the intersection of collection and analysis in categorizing information often is used to thwart the objectives of standardization, since analysis is not similarly subject to central review. But it also is due to the fact that only rarely does OMB or GAO opt for standardization across agencies. Even for the uniform requirement is set forth, as when a White-Collar Crime Referral Form for collecting and referring information on fraud cases to the Department of Justice (DOJ, 1978), the form was developed and received both its FPMR and interagency report control clearances without the standardization of reporting for some items of information. The approved occupation code for that form, for example, represents a mix of industry and occupation normally separated in standard occupation and industry classifications.

Likewise, it seems clear that internal record keeping systems do not ordinarily require central clearance, particularly when information is a by-product of daily operations or a by-product of management information systems. The offices charged with report form coordination functions, furthermore, are not equipped with a systematic data base on all government information systems that would allow them to computer match the content areas of forms from different agencies.

The core of any analysis system in most agencies is an electronic information system for storing and recalling data for operational or other management goals. Each agency has great latitude in how it links data collection to the management information system and in how it categorizes information for its own goals. Since most of the information available as time series for white-collar crime is now a by-product of these electronic management information systems, the autonomy of each agency in its structuring can even thwart what standardization takes place for data collection. This is particularly the case when each agency has the latitude, as it now does, to determine in what substantive categories it will report information. Agency discretion makes it possible, for example, for IRS, the U.S. Attorneys, and the Administrative Office of the U.S. Courts to report the same tax matters in different violation categories. To be sure, the problem of variation in classification of tax matters is exacerbated, in this case, by the fact that the Administrative office is not subject to executive control but to the authority of the Chief Justice of the United States Courts.

A tenth requirement of a uniform statistical reporting system on white-collar law violations is that it must provide for standardization of both data collection and analysis and reporting, if collation among agencies is to prove a feasible means of estimating matters about white-collar law-breaking.

Organization of Reporting in the Judicial Branch

The problems of statistical reporting are somewhat simpler for the judicial than the executive branch. The administration of the U.S. courts falls under the Chief Justice and the Administrative Office of the U.S. Courts that is responsible to him. Although there is a degree of autonomy in the 94 judicial districts and 11 judicial circuits, the Administrative Office exercises central control over case reporting and maintains a central file for each case filed by a U.S. Attorney. This case file is accessible to public use, with unique identification of offenders and personnel deleted, as computer tape file information. The current classification system of the

Administrative Office does not lend itself to useful classification of white-collar violations of law, in that it lacks the statutory detail that is part of the comparable U.S. Attorneys' file. The latter file permits a more substantial reclassification of violations to meet different analysis goals.

A major problem for a statistical reporting system on white-collar law violations arises from the constitutional separation of the judicial from the executive branch. This constitutional separation has given rise to presumptions against the sharing of uniquely identifiable information that would make possible the use of a stock and flow model of statistical reporting for matters that originate with executive agencies and U.S. Attorneys and terminate in the U.S. Courts. There is reason to doubt that the constitutional separation of powers doctrine formally prohibits such sharing. Much of the information, indeed, is available in U.S. Attorneys' files since they acquire the information in the course of their participation in the judicial system. The point is a more serious one at the output end of the court's processing of cases, i.e., relating judicial information to executive branch information on corrections and parole or to the court's own administrative probation functions. This latter problem of sharing output information is the more serious one, though diligent investigation may disclose that it is not intractable. No one seems to have explored the possibilities of relating information in the U.S. Attorneys' file of the Department of Justice to that on files of the U.S. Bureau of Prisons and the U.S. Parole Commission.

This is not the place to explore the seeming constitutional and administrative code barriers to the sharing of information among the executive and judicial branches. The problem may be more political than legal, given the powers of the Congress to obtain information for fiscal accounting. The organization of the judiciary, moreover, is subject to considerable Congressional power, including power to compel reporting on judicial matters. Yet there is no reason to conclude that much headway will be made in overcoming these political barriers to the sharing of information or to resolve them by litigation.

There are some relatively minor problems in obtaining information on judicial determinations of white-collar crime in that there are several minor courts that appear to have relevant information on civil matters involving penalties. The United States Court of Claims, for example, renders judgments for reasonable and entire compensation in cases where the United States in its governmental capacity infringes private rights in invention, copyright, or manufacture--instances where the government potentially is the offender in white-collar violations. Not only are such

cases relatively few, but, since they ordinarily do not involve using a position of power for illegal gain for the government, they are not instances of white-collar law-breaking by our definition.

Somewhat more substantial are matters that come before the United States Customs Court and the United States Tax Court. The United States Customs Court has exclusive jurisdiction over civil actions arising under the tariff laws. It thus is the principal sanctioning agency in customs matters, since the majority of cases where penalties are levied in customs matters are civil rather than criminal. The United States Tax Court likewise has sanctioning powers. It has jurisdiction to redetermine income, estate, and gift as well as excise taxes and penalties imposed on private foundations. Most Tax Court decisions are appealable to the U.S. Courts of Appeals, and therefore by the U.S. Supreme Court upon the granting of a writ of certiorari. Tax disputes involving \$1,500 or less, at the option of the individual taxpayers, may be tried before the Small Case division where the decision of the Court is final. There seems to be no way of knowing, however, just what any of these courts might contribute to our understanding of the adjudication of matters involving white-collar violations of law.

Organization of Reporting in the Legislative Branch

There appears to be almost no way to determine through statistical reporting or information systems of the legislative branch of government how much white-collar violation of law occurs within the agencies of the legislative branch or by the Congress and its staffs. Some information is available on legislator conduct through the several investigating and ethics committees of the Congress. Reports of the Sergeant at Arms of the Senate, who is also the body's Law Enforcement Officer, are of little help. Most information on legislator misconduct comes from private sources, such as newspapers, where unique identification is possible.

The several agencies under the legislative branch, ranging from the Architect of the Capitol and the United States Botanic Garden to the General Accounting and Government Printing offices through the Library of Congress, the Cost Accounting Standards Board, the Office of Technology Assessment and the Congressional Budget Office, comprise eight agencies with a substantial volume of employment. Little is known, however, about how the conduct of their matters might involve white-collar violations of law. Indeed, these agencies appear to fall outside any

current reporting system that accessions white-collar crime matters other than the criminal justice system that may upon occasion receive matters on referral.

The General Accounting Office, however, through its accounting, audit, reports review, and data verification functions provides considerable information that is relevant to white-collar law-breaking. Noteworthy are the many investigatory reports it prepares assessing government programs and their control of fraud and abuse. GAO commonly reviews the accuracy of reporting systems in making inquiry into other matters. It perhaps has drawn more attention to the problems of inaccuracy in information systems than any other government information system. Much information on data quality and on the accuracy of estimates of regulation or enforcement is available through special GAO studies. Thus, while GAO rarely provides information that is available as time series, it has much to offer in assessing the quality of information in time series and of government statistical reporting more generally.

The GAO also has some law enforcement and adjudication functions. Under the Energy Policy and Conservation Act (42 U.S.C. 6201) approved in 1975, the Comptroller General conducts verification examinations of energy-related information developed by private business concerns. In addition to subpoena and inspection powers, the Comptroller General has powers to assess civil penalties and to collect such penalties through civil action for some types of noncompliance. The GAO also settles claims by and against the United States as required by law.

On the whole, though, the agencies of the legislative branch either are so immune from conventional statistical reporting that they net little information on white-collar violations of law or they have such limited law enforcement functions that they contribute little to any current information systems on white-collar law-breaking. Nevertheless, the major audit functions of GAO provide, as already noted, substantial worthwhile information on data quality and audit procedures of executive agencies.

Sharing Information Across Agencies

At the present time, there is relatively little sharing of information across agencies. This is due in part to the lack of clear jurisdiction over information. Reasons for this lack of jurisdiction include the separation of executive and judicial powers, restrictions on release of information, such as on tax matters; fears and resistance to "Big Brother"-ish centralized case information; the decentralized national statistical "system" with only weak central mechanisms for statistical planning and coordination (JAHCOGS, 1977, 1978). Only in special instances do

agencies operate with a clear requirement that they share data. But, if one is to have accurate stock and flow statistics on white-collar enforcement actions, ways must be found either to share information on common cases or to make estimates that permit correction of stock and flow statistics generated by a network of agencies that do not share a common information base.

Each branch of government generates some information on white-collar violations of law. While the smallest contribution of information may come from the legislative branch, its role is not inconsequential, particularly in the power of its audit authority exercised by the General Accounting Office. The General Accounting Office has statutory authority to investigate all matters relating to the receipt, disbursement, and application of public funds--matters where white-collar violations of law are common. The scope of the audit work of the GAO extends not only to programs and activities which the Federal Government itself conducts, but also to the activities of State and local governments, quasi-governmental bodies, and private organizations which receive or administer federally financed programs. These broad powers generally are not exercised so as to provide continuing series on white-collar violations of law--though together the Executive Office of Management and Budget, the Office of Statistical Policy and Standards of the Commerce Department, and the General Accounting Office have considerable power to create a more uniform system of statistical reporting on white-collar crime.

The Judicial branch includes the Supreme Court of the United States, the U.S. Courts of Appeal, and the United States District Courts. In addition, there are a number of special courts that handle white-collar violations of law, principally the United States Customs Court and the United States Court of Claims. Matters coming before all regular and special courts are summarized statistically in the Annual Report of the Director of the Administrative Office of the United States Courts, except for those matters of the United States Tax Court and the United States Court of Military Appeals. These latter courts are Article I (Legislative) courts, not Article III, (Judicial) courts. Because the Administrative Office of the United States Courts has the responsibility for reporting upon almost all federal judicial matters, it is altogether possible to have a standardized set of judicial statistics for the United States in reporting on white-collar violations of law. The Administrative Office has not developed any detailed classification of statistical reporting, however, relying rather upon broad conventional categories. This in is marked contrast with the detailed classification employed by the United States Attorneys. There currently is no administrative collation of federal court statistics with those of the Executive Branch, e.g., with those of the

U.S. Attorneys. Much information in the Administrative Office files also is available in the U.S. Attorneys files of civil and criminal matters.

Much of the information on white-collar violations of law arises in connection with the enforcement and regulatory activities of departments, agencies, and quasi-official agencies of the Executive Branch. Inasmuch as criminal matters can be prosecuted only by the Attorney General and the U.S. Attorneys of the Department of Justice, it is possible to have uniform statistical reporting for all matters that agencies decide are to be referred to the U.S. Attorneys or to the Department for treatment as suspected crimes. The collection and recording of information on criminal referrals, however, is quite loosely organized at the present time, owing both to the relative autonomy of the U.S. Attorneys and to the absence of central coordination of statistical effort within the Department of Justice. The creation of the Bureau of Justice Statistics within the U.S. Department of Justice may eventually lead to more uniformity. Currently, the Criminal Division of the Department of Justice is attempting to secure information on every fraud referred by any federal department or agency to a United States Attorney's Office, the Criminal Division, Federal Bureau of Investigation, or another part of the Department of Justice for prosecution or further investigation, but these matters are not as yet classified in any uniform way. Although the Department may categorize matters referred to it, it has no authority over these cases prior to their referral. The question as to what is to be referred as a criminal matter rests, therefore, with each individual department or agency, and the staff of the Criminal Division staff or U.S. Attorneys have discretion to reject such matters when referred.

The effect of barriers to sharing information across agencies on uniform reporting give rise to an eleventh requirement of a uniform reporting system on white-collar law-breaking. In each network of related information systems it should be possible to create cohorts or synthetic cohorts for stock and flow statistics and to identify successive violations by the same violators.

Agencies as Sources of Information on White-Collar Law Violations

A federal statistical reporting system on white-collar law-breaking is not intended to optimize each agency's particular interest in and use of its information on white-collar violations of law. Rather, a federal statistical interest lies primarily in the relevance that each agency's information on white-collar law-breaking has for legislative and administrative purposes when it is merged with that from other agency data sources.

This difference in agency as compared with federal statistical reporting system interests perhaps can be made clear by considering both the current Uniform Crime Reporting on ordinary crimes against persons and their properties and some requisites for a federal reporting system on white-collar law violations.

The current Uniform Crime Reporting (UCR) system is based on monthly and annual aggregate reporting by police departments on crimes against persons or property and on law enforcement. Each month, each voluntarily participating police department in the United States files three basic and several supplementary reports with the FBI's Uniform Crime Reporting Section on the seven Index or Part I offenses known to the police, the age, sex, and race of persons arrested for Part I and Part II offenses (separately for persons under 13 and 13 years of age and over) and of law enforcement officers killed or assaulted in the line of duty. Annual reports are filed that compile information on persons charged with Part I and Part II offenses and on the employment of law enforcement officers. The information from all reporting police departments then is merged and estimates are made for nonreporting departments. The collation of reported with estimated information comprises the basis for portraying the current state of "Crime in The United States" and for statistically measuring changes in crime and crime-related matters.

Although most participating departments will include the information reported to the FBI in an annual report for their department, it is not uncommon for these annual reports to include information on local variation in crime and policing, computing local area statistics. Thus information on the offenses known to the police or on police manpower will be reported by divisions of the city, e.g., precincts or beats--often by visual mapping of the information--or by operating divisions of the police department, e.g., the detective, vice, and traffic divisions. Since the organizational and areal subdivisions follow no uniform principle, these disaggregations of data are not useful for the national statistical system. Many police departments collect and report additional information, but not in a form that permits aggregation for national reporting. One would seem to be a long way, for example, from a national statistical indicator based on police commendations. This is not to say that one could not make use of much information that now is considered "local" in national reporting, but only to suggest that it would have to be in a form different from that which has utility for the local police department.

One use of national reporting is to give a local agency an opportunity to compare itself with other local agencies. The UCR does this for cities and towns of 10,000 or more

inhabitants. Some types of data, however, afford scant possibility of local comparison. The UCR, for example, reports law enforcement officers killed only for the nation and its geographic regions.

In any federal reporting system, then, one is usually disinterested in the variation within the small operating units of police departments at the local level. Local indicators are of interest only by comparison with other local indicators or when they are merged.

Sources of Information for Statistical Series Within Agencies. These same reporting issues arise in considering a federal reporting system on white-collar law violation. In the present instance, the individual reporting units are federal agencies, programs, or departments. In a federal system that would collate and merge information from these reporting units, we have less interest in the particulars of variation related to the management of any agency than in how such particulars may relate to the management of a federated system. This is not to say that one is disinterested in information for agency or administrative divisions, but to suggest that our interest in collection or operating agency statistics lies primarily in their contribution to aggregate information from all agencies or to in comparisons among like agencies or component indicators. Put another way, a federal statistical reporting system may well develop subnational indicators, e.g., by judicial districts, by states, or by regions. But the primary interest in doing so is for comparative purposes among the subunits and not for matters relating to their internal variability.

Our interest, moreover, does not lie primarily in any given statistic for a given point in time (current states per se) but rather in statistical indicators of white-collar crime. Any statistical indicator while giving a current estimate will also rest in a time series (monthly, quarterly, semiannual, annual, quinquennial, or decennial periods in the series). Although each agency may produce many statistical indicators, our attention focuses on collecting and merging information from agencies for a federal set of statistical indicators on white-collar crime. We are concerned, therefore, with the content and forms of data collection and reporting since these determine the quality and quantity of information that can be merged and the ways and forms of merging that are possible. We shall consider the ways that an agency collects and stores information which potentially might serve as a source of information for statistical series on white-collar crime.

The Case Record. The basic way of organizing information on any operating or administrative system is a case file or record. The case file, in turn, becomes the

basic source of input into 'official' information systems. Occasionally, the case file is simply the equivalent of a case information form, but ordinarily the file includes additional information that is added from time to time. Later we shall examine the basic units in white-collar law-breaking information systems. Here we simply note that there is no single entity or event that identifies or constitutes "a case." A case may begin with an investigation of a complaint, an inspection of an environment, or an event. It may begin with administrative or legal actions concerning a victim or a violator. Or, a case may begin by voluntary compliance with an affirmative duty, such as the filing of a taxpayer return. Regardless of what constitutes the case, the case file tends to share certain important characteristics that invest it with institutional properties relevant to the evaluation of statistical reporting series as sources of information on white-collar law violations.

Susan Shapiro's (1980) study of social control in the Securities and Exchange Commission (SEC), based on a sample of SEC case files for each year since the agency's creation in 1934, affords us a useful appraisal of the administrative case file. These records are stored in the Federal Records Center in Maryland and were brought in small batches to the SEC headquarters building in Washington, D.C., for her use. Shapiro begins her assessment of the case files with a description that emphasizes how difficult and time-consuming it can be to collect information from case files, noting that:

"Files range in size from several pages to dozens of boxes and thousands of pages. The average file in the sample had perhaps several hundred pages. The size of a file is usually correlated with the scope of investigation and the fact of and nature of formal prosecution. Some files, regardless of age, seem more complete than others, but the vast majority share a richness of detail that is both gratifying and overwhelming." (Shapiro, 1980:76)

Shapiro goes on to note that among the items typically found in an SEC investigatory file are the following:

"forms completed upon opening and closing the investigation, noting the circumstances of the investigation, the acts and statutes allegedly violated, dates, identities of investigators and of subjects investigated, the nature of the illegality, the type and outcome of prosecution, if any, and justifications for prosecutorial choice;

"quarterly reports noting the progress of investigation;

"memoranda to the Commission requesting Formal Orders of Investigation or the institution of civil, administrative, and/or criminal proceedings, generally describing the offense and offenders in great detail and outlining relevant consideration and precedents for taking the action requested;

"other memoranda between staff;

"copies of correspondence to and from the agency reflecting offenders, victims, informants, other social control agencies;

"criminal reference reports transmitted to the Department of Justice requesting criminal prosecution, prepared with great detail to the nature of the offense, the investigation, available evidence, prosecutorial rationale, etc.;

"copies of civil complaints, indictments, administrative charges and announcement of the outcome of proceedings;

"press and other releases, newspaper articles and clippings;

"records of file searches for 'recidivism' information on the subjects of investigation;

"reports prepared for probation or pre-sentence investigations;

"transcripts of testimony, documents, records, copies of subpoenas, court exhibits and papers." (Shapiro, 1980:76-77).

The basic unit establishing an SEC case file is an investigation. As Shapiro notes, the materials in a case file often are redundant since they include all of the information resulting from an investigation. The actual case file in fact functions to store materials for possible use in the future. Some management systems organize the file to make the information more accessible to requests by others within the agency for whom it might have some utility. Inasmuch as the case file is not intended for any outside audience, it often includes information in greater detail and with greater candor than is characteristic of processed information. Files provide agency information on cases in raw form. As Shapiro concludes, the advantage of case files is that they lack "... the public relations gloss or self-serving quality characteristic of records generated for public audiences. The contents of

investigative files . . . (are) tremendously valuable for abstracting a full and realistic sense of administrative practice" (Shapiro, 1980:77).

The merit of investigation files is not without its disutility, however. For again, as Shapiro remarks:

" . . . because they were working files, they were necessarily one-sided. They told the SEC side of the story--its perceptions of the circumstances of violation. They did not systematically tell the stories of the subjects of investigation--their characterization of the events in question and their justifications, alibis, denials, excuses. . . . The accumulation of other stories--from offenders, victims, the securities bar, the judiciary, other social control agencies, the news media . . . [are absent]. (Shapiro, 1980:77-78).

All who have carefully studied and reviewed case files (Sellin and Wolfgang, 1964:106-113; Cicourel, 1968:15; Shapiro, 1980:76-79) conclude that while the information in such files is affected by the biases and perspectives of each particular social control agency, these selective treatments of events are relevant when the object of inquiry is the study of social control.

The utility of any case file system for statistical reporting depends in the first instance upon the completeness and accuracy of the information. The more uniformly structured, organized, and complete the information in case files, the more likely the files can be used to compile statistical indicators. The case file, however, must remain a marginal source of information for any statistical reporting system on white-collar law violations. As the foregoing description should make clear, the quantity and quality of case file data make it extremely time consuming to collect and process file information as statistical indicators. Indeed, in doing so, one ordinarily resorts to preparing the information for tabulation and analysis in electronic data processing information systems. For the foreseeable future, agency case files should be accessible primarily for purposes of assessing the accuracy of the information input into advanced data processing systems, for conducting sample surveys of relevance to statistical indicators, and for filling in any major gaps in a statistical series.

For the most part, however, either the statistical data from the advanced data processing systems of each agency or the reports prepared from them must be the major sources of information for a uniform reporting system on white-collar violations of law. We examine the many problems that inhere in merging information on white-collar law-breaking from

agency sources in a later chapter. Here our discussion is limited to problems of getting access to, and collecting information from, case files, electronic data processing files, or agency reports.

An initial problem in accessing information is to learn what exists, in what form, and with what categories that may be merged with information from other data systems. Most agencies do not have a central index of all the information they collect and compile on statistical reporting that makes them readily accessible to retrieval. The published agency directories, listings, and reference guides all are limited in coverage and scope although most agencies have internal indexes that are available on request under FOIA. Still there often are raw data and unpublished reports which are not included in internal indexes and these ordinarily can be obtained only by acquiring information on them from informal sources.

Once information is located, gaining access to it may be difficult and time-consuming for persons outside the agency, particularly for anyone outside of government. Unique identification may need to be removed from computer files and privileged materials screened from case files. One research worker reports that his access to the files of the Antitrust Division of the Department of Justice was less restricted for civil than for criminal investigations. Even for civil investigations, however, all Grand Jury and some FBI and civil subpoena material had to be removed from the files before he could have access to them. Three full-time paralegals were required to provide him with sufficient case file information to occupy him full-time at work. (Private communication, Donald Scott, 1/25/80). Although requests for information ordinarily must be met by giving access to it within 10 business days under FOIA, agency budgets for clerical or paralegal assistance often make for much longer delays.

Whether or not one can gain access to information depends also upon retention schedules for information. Government records, including data tapes and their source materials, may be stored by an agency but most are stored by the National Archives and Records Service (NARS) of GSA. Some, but by no means all, computer files are stored by the Machine Readable Archives Division (MRAD) of NARS. Whether or not the information is accessible there depends in part upon whether it is an agency or a GSA "record".

Assuming that one can gain access to the computer files of given agencies, it is almost impossible to identify cases that are common to more than one file, to merge information from several sources, or to eliminate duplicate cases. These difficulties stem initially from the lack of common identifying information that might provide a basis for

matching case records. Where information is shared among agencies, it ordinarily is by adding to a given agency's file rather than by accessing the information directly in the file of another agency, a procedure that would require standardizing access to records across agencies. We shall have occasion to refer to this problem later, since it is a matter of interagency access to common information as well as of the creation of interagency files.

Unfortunately, when one gains access to the files of an agency, they often are not comparable across time periods, since frequent changes are likely to have been made in file structure, the classification of information, and the way that matters are accessioned or counted. For these reasons, it may be difficult to create a time series from the information files. To do so usually requires considerable inquiry into the nature of the files and recoding and classifying information to introduce comparability. Even more disconcerting is the fact that agency files often are structured on an annual basis, e.g., a fiscal year. This makes it difficult to obtain case flow information for an agency. We found, for example, that the annual files of the U.S. Attorney's Office are structured such that one cannot follow with any high degree of precision an entering cohort of cases until they are disposed of by some final action. One reason for this is that the files are structured to provide case stock rather than case flow reports. Another is that the basic unit in that office's system is a person rather than an event, providing difficulties in identifying events and following them over time.

Problems of matching and merging are compounded if one seeks to track cases across agencies. Most current agency information systems are not designed for tracking cases over long periods of time and as it moves among agencies. One cannot, for instance, follow a case from its inception in a program agency through its referral to a U.S. Attorney and then back to the agency, should it have been rejected for prosecution. Nor, if it is approved for filing, can one follow it through the U. S. Attorney's file to that of the court and of any agency subsequently handling matters related the case. For these reasons, conclusions about case flow often can be reached only from synthetic cohorts that are developed from the information on stocks in the several agencies through which cases flow. Often even that is not possible since the level of detailed information available on stocks is too crude to permit its being used in a synthetic cohort model of case flow.

There is a special class of documents that are of particular value to statistical reporting systems and whose existence investigators have found it difficult to learn about or to access once their existence is known. These documents are reports on the quality of information in the

system and on the nature and efficiency of its operations. Such materials run the gamut from memoranda on law enforcement strategies and tactics to highly technical treatments on the selection of an audit sample. We shall have occasions to show how such reports are invaluable in understanding changes in a time series and for assessing the accuracy of information on which it is based.

Apart from case files and electronic data system files based on them, for some agencies, a major source of statistical series is reports based upon audits or sample surveys and reporting systems. Although audits and surveys are considered later, we note here that it is especially difficult to merge information from audits and surveys as they currently exist because they either are utilized only for quality control in a system or because they serve as a proactive means of detecting or monitoring special kinds of violations, ones that are not easily merged with conventional forms of white-collar violations, e.g., the product violations from NEISS.

Overcoming Disutilities in Access to Information for Statistical Reporting on White-Collar Law Violations

The foregoing review of major problems of access and use of agency information sources to create statistical time-series on white-collar enforcement actions suggest a number of ways that one might increase the utility of agency information systems for this purpose. These ways are stated below in the form of recommendations for the creation of a federal system to develop statistical indicators of white-collar crime.

- (1) A special Sourcebook on White-Collar Violations of law should be prepared annually.
- (2) Each agency should be responsible for assembling historical series on white-collar enforcement actions and for both continuing and augmenting such a series annually. There should be interagency agreements on a common substance and form for such reporting.
- (3) Current retention schedules for information produced by agencies should be reviewed to insure that basic statistical sources with respect to white-collar violations are preserved until a permanent system of statistical reporting on white-collar law-breaking can be established.

- (4) The Machine Readable Archives Division (MRAD) of NARS should set standards for retention of computer files that have information relevant to the development of white-collar crime indicators.
- (5) MRAD should prepare public use tapes (with unique identifiers deleted) for information files relevant to white-collar law violation, including, when possible, merging information from files before unique identifiers are deleted.
- (6) At the present time, only certain computer files are retained by MRAD. There should be central archiving of agency information relevant to white-collar violations either within MRAD or some division of NARS.
- (7) Whether or not central archiving is achieved, there should be a Directory of Information that lists all relevant information sources on white-collar law violations (both machine readable and documentary). Such a directory should include a listing of all materials that are supplementary to or relevant to interpreting or using the primary sources on white-collar violations. Finally, information should be given on whether or not public access is possible and, if so, under what conditions.
- (8) Within the directory (or apart from it) there should be a listing of all reports that are relevant to understanding the structure of any statistical indicators on white-collar law-breaking and of how the indicators are developed and their quality monitored.

Limits of Official Reporting Series for Summary Statistics on White-Collar Law Violations. Two of the major barriers to uniform reporting of white-collar law violations are the absence of standardized modes of data collection and of criteria that will permit the merging of information from official collecting and reporting sources. A later chapter discusses these barriers to collection and merging in some detail. Here we call attention to some general barriers to the development of statistical indicators in federal statistical reporting and to some problems specific to statistics on white-collar violations of law.

Currently, it is extremely difficult to develop subnational indicators of white-collar law violations by merging agency sources. This difficulty derives in large part from the fact that except for the states there are no universally used, standard statistical reporting units below

the national level. And, quite commonly, federal agencies do not report information by states. The more common reporting unit is geographic regions, but each agency has its set of regions or geographic areas based on management of its operating divisions. These regions usually do not correspond with the ten standard Federal regions. We were unable to determine whether very many agencies, if any, that collect information on white-collar law violations use the same subnational reporting units except for the Administrative Office of the U.S. Courts and the United States Attorneys' Offices which both report for the same 95 judicial districts. The failure to divorce statistical reporting for subnational units from operations for subnational units is one of the disutilities of a decentralized federal statistical system.

A second problem arises if one wishes to develop measures of discretionary decisions in the processing of white-collar offenders. Although one can gain some information on referrals for criminal prosecution from the current system, little is known about how discretion affects agency decisions to refer for criminal prosecution. Similarly, within the U.S. Attorneys' offices, considerations affecting their decisions to prosecute or reject the referral for criminal prosecution also are not systematically described. What little evidence we have on the exercise of discretion is based on anecdotal evidence and guesstimates by officials, such as in Rabin's (1972) study of agency criminal referrals in the federal system and the grounds for prosecutorial discretion. One apparent reason why so little is known about how our statistical knowledge of white-collar violations is affected by discretion is the failure to provide for following cases through the several executive and judicial departments and divisions through which they may course. But it is equally apparent that most agencies have not generated information that is relevant to discretionary decisions affecting case flows either within their agency or from their agency to other agencies.

What is surprising is that many agencies have the information to identify such flows but it ordinarily is not synthesized to investigate case flows. Even where there is substantial provision for case tracking, as in the IRS's Case Management and Time Reporting System (CM & TRS), most of the information in the case history file is not reported so that one can monitor case flows (Long, 1980). Few agencies, however, even possess the case tracking capabilities of IRS for criminal referrals. This IRS advantage may be partly owing to the fact that few agencies possess a separate Criminal Investigation Division that makes decisions about case referrals for criminal prosecution and systematically follows each case through to sanctioning, when such actions are taken. Indeed, the

maintenance of a separate Criminal Investigation Division within IRS, as recent GAO reports note, remains controversial.

An additional difficulty stems from the fact that most agencies classify violations in terms of their particular statutory authority and of their capacity to sanction. When cases are referred for criminal prosecution some classification may be made in terms of the Criminal Code of the United States though such classifications can be rather different from the actual charges filed by a U.S. Attorney or the classification that is implied or explicitly reported when there is a decision to decline criminal prosecution. Merging information by type of violation is no simple matter then, given the diversity of substantive and penalty statutes for law violation. The matter is simplified to some degree for criminal as compared with civil violations of law. Given references to the criminal code in the many agency and program statutes, the major way to codify them is in terms of the basic categories of the criminal code and its penalty statutes. For civil violations, however, it is far more difficult to merge the violation classifications of different agencies in terms of categories of law violation.

The problem is rendered even more difficult when one adopts the definition of white-collar law-breaking proposed in this study. To use our proposed definition, either assess empirically the degree to which conventional categories report violations that conform to the proposed definition and then use these estimates to correct reporting figures or one must develop a new reporting system based on the proposed definition, e.g., one where the elements of misuse of position of power and illegal gain are present. This problem is examined later at some length. But clearly, in the history of the common-law little attention has been given to defining offenses that single out violations of the sort we have characterized as white-collar crime.

Secular Changes Affecting Statistical Reporting in Official Systems

Legislative Changes. Any statistical series on violations of law, particularly of white-collar violations, is subject to considerable change resulting from changes in legislation. Legislation affects the quantity and the quality as well as the kinds of violations that are reported. It is simple to demonstrate that any time series for any given agency cannot be understood except in the context of changing legislative requirements for what is against the law and what provisions are made for law enforcement. Legislation, i.e., statutory provisions, can affect a series directly, while the legislative process may affect it indirectly.

There are at least eight major ways that legislation can affect a statistical time series:

- (1) Changes in substantive mandates. Over time, the Congress may add to a particular agency's substantive mandates, or take away from them. The FDA, for example, has had considerable increase in its statutory authority over time, beginning largely with jurisdiction over food and drugs, and then securing increasing control over other products, such as cosmetics and food and color additives. Still later, other hazards to health were included in its mandate, such as hazardous ionizing and nonionizing sources of radiation and pesticides.

Legislation also may decrease enforcement and authority in some areas as when the Congress removed drug enforcement authority from Customs and HEW in creating The Drug Enforcement Administration (DEA) in 1973, or when FDA lost jurisdiction over pesticides to EPA in 1970.
- (2) Changes in sanctioning mandates. The Congress can increase or decrease the kind and range of penalties or sanctions available to an agency. To return to the FDA, increasingly the Congress gave FDA the power to make decisions that have administrative finality--a power that was later affirmed by the U.S. Supreme Court--in addition to its original powers to sanction by seizure, injunction, and referral for criminal prosecution.
- (3) Changes in procedural requirements. From time to time the Congress legislates enforcement policies or requirements that have considerable impact on what an agency can and does report as violations of law. An obvious example is the recent requirement that MSHA annually make four inspections of each subsurface mine and two of each surface mine. Prior to that legislation, the number of inspections annually was much smaller and discretionary with the agency.
- (4) Changes in jurisdiction. The Congress can make rather substantial changes in jurisdiction or provide for the relinquishment of federal enforcement to states that meet federal requirements. OSHA legislation, for example, provides for state enforcement. Since those states whose enforcement programs are approved

have requirements above the minimum for federal participation, they contribute disproportionately to the merged federal statistics.

- (5) Changes in organization of enforcement. Over time the Congress consolidated criminal investigation and prosecution in the Department of Justice, though some exceptions prevail, such as criminal investigation in IRS. The most recent and significant Congressional mandate was that requiring Inspector General offices be established in each of the departments of the executive branch. The effect has been to create enforcement activity and statistics on a scale heretofore lacking.
- (6) Law enforcement manpower. Both through legislation with respect to budget and legislation with respect to the kinds of enforcement agents an agency or department may have, the Congress controls the volume of violations of law that can be processed in an agency. Substantial changes in the kind or quantity of law enforcement manpower can affect statistical time series on violation of law. Congress, for example, legislates the number of tax investigators that IRS may employ. This in turn affects the volume of violations reported by IRS.
- (7) Reporting requirements. Statistical reporting on white-collar crime also can be affected by legislative reporting requirements. A recent example is the requirement in the act creating Inspector General offices for an Annual report to the Congress. Over time, such reporting requirements generate time series. Reporting requirements are also often intended to serve as a spur to greater agency action, although in instances such as those that are currently targets of Congressional concern with overregulation and "overly zealous" regulation, they may have opposite intent and effect.
- (8) Changes in organizational powers to sanction violators. The Congress has increasingly given agencies powers to seek compliance rather than to punish violators and to provide for decisions with administrative finality in lieu of civil suit or criminal prosecution. Such alternatives introduce change not only in specific enforcement time series but also in statistics on sanctions. The advent of administrative law powers, for example, sharply reduces civil suits and criminal prosecutions.

There are several ways that the Congress may exert indirect effects on a time series.

- (1) GAO Investigations. Not uncommonly GAO inquiries into an agency or program make substantial recommendations about reporting or audit requirements. These, in turn, affect the quantity and quality of statistical reporting. Where there is no direct impact on reporting, such reports are helpful in assessing the accuracy of statistical series. Thus a recent GAO report (Dec., 1979) highlights the error in casualty and theft loss deduction in IRS filings, making it virtually impossible to separate error from intent.
- (2) Oversight Committees. Though it may be quite difficult to document the precise effect of oversight committees on statistical time series on white-collar violations of law, the demand of oversight committees for statistical reporting undoubtedly has an effect on both what is and is not reported and the explanation of such conditions.

Internal Administrative Changes. There is much speculation about the ways that executive power may affect the enforcement policies and practices of agencies, thereby having a substantial impact on a time series. One often hears comments that a particular administrator had a substantial effect on enforcement policy, such as Thurman Arnold had a substantial impact on Antitrust enforcement, or that a presidential administration changed policies, e.g., that the Seventies saw a substantial shift in SEC enforcement strategies. It is difficult to determine whether such impressions are accurate for at least two reasons. First, there is no simple way of demonstrating in any precise way that executive power was used and, if so, how it had its impact on the work of the agency as reflected in statistical reporting. Second, there is reason to expect that there should be lags in effects produced by administrative changes. The measurement of lags is difficult, given the first level of imprecision in determining when the change was implemented in a way that potentially might produce effects.

Administrative changes can have an impact on a time series originating either within an agency or in some way affecting relationships among agencies. Each of these sources is considered briefly.

There are at least four major ways that an agency can affect the production of white-collar law enforcement indicators by administrative changes.

- (1) Agencies may alter policies of enforcement. This is not an uncommon occurrence. Within both the Antitrust Division of the U.S. Department of Justice and within the FTC there occasionally are shifts in enforcement among different types of industries--moving enforcement strategies from one industry to another, and ignoring some industries altogether for long periods of time.
- (2) Agencies may shift allocations of enforcement resources. Normally this occurs in connection with a change in policy, but it need not be tied to such changes. The IRS, for example, derives a discriminant function (DIF) formula to screen returns for audits based on TCMP results (Long, 1980) and takes this into account in annual decisions to reallocate enforcement manpower. Administrative changes in collection, collation, and reporting of information can also have substantial effects.
- (3) Agencies may make substantial changes in the structure of their information system. The movement of agencies to electronic data processing systems has had a substantial impact on the form and content of what is reported in time series, particularly by programming the production of information reports. Unfortunately, the structure of such systems also changes when an agency is given responsibility for enforcement formerly held by another agency, or, correlatively, gives up such information.
- (4) Agencies may make changes in what is collected and reported and in its content. Such changes may occur simply from internal initiatives or as responses to managerial or reporting requirements placed upon an agency. The U.S. Attorneys' data file, for example, has been subject to substantial change in a number of districts because they were selected for "trials" for a Chief Attorney's management-of-cases system. These changes have made it difficult to merge the information from those trial districts with the information from other districts for the national reporting system. Case management in a local prosecution system requires rather different information categories from that of case management of all offices in a system. If the U.S. Attorney's Office invested in the "trial" case management system, one can expect substantial changes in its time series.

Extra-Agency Administrative Changes. There perhaps are two major ways that extra-agency administrative changes affect statistical reporting systems on white-collar crime:

- (1) Interagency agreements. Currently the Department of Justice is developing a fraud file based on interagency agreement for referrals to DOJ for investigation. In this instance, a new information system is being created. But interagency agreement such as that between the Antitrust Division of DOJ and the FTC about what cases each will pursue in antitrust enforcement, given overlapping jurisdiction, has some impact on a series of enforcement. Normally such changes are infrequent and of relatively little importance in affecting an agency's indicators.
- (2) Executive reorganization. Executive department reorganizations, both those requiring and those not requiring Congressional approval, can have an impact on the statistics produced by an agency. Effects of reorganization measures have been especially evident during the 1970's. Among other matters, one would expect recent reorganization to have an impact on internal inspections statistics.

That administrative changes are in many instances quite consequential in their statistical consequences cannot be doubted. A close reading of the annual reports of a given agency, such as the FDA, makes abundantly clear that the agency's executive powers have been used in ways that affect its reporting on enforcement of the law. We shall have occasion to illustrate these changes later by examples from FDA reporting. But one of the difficulties, as previously noted, is that it is almost impossible to determine the precise nature of such effects. Depending upon the significance of the impact, the effects of most of the types of administrative changes noted above would be less pronounced on a system of merged statistics, however, than they are for the statistics of any given agency.

Private Reporting Systems on White-Collar Crime

The main focus of our project has been on official government reporting systems on white-collar crime. We have concentrated on federal sources because of the logistical problems inherent in exploring combinations of both federal and local official reporting systems. This strategy ignores the fact that there are private intelligence and reporting systems gathering information on white-collar violations of law. Some sources also report information on official government matters. Some may have advantages in being free

from the self-interest of a government reporting system, although they may have selective biases associated with their own auspices and clienteles.

These private sources are not treated in any detail since we lack knowledge of them. Attention to private sources may shed light upon official government reporting systems of white-collar law enforcement indicators and their future development. They also provide alternative information on white-collar law-breaking that merits future exploration.

Private Detection, Enforcement and Sanctioning Systems. We shall begin by considering several major kinds of systems that detect, enforce, or/and sanction white-collar violations of law independent of official detection and sanctioning systems. The first of these are private social control agencies that have responsibility for regulating some form of conduct. Many of these private regulatory agencies possess sanctioning as well as enforcement powers. The major ones of importance are these:

- (1) Professional regulatory and sanctioning bodies, particularly those regulating the professions of law and accounting, but also including all ordinary professional organizations.
- (2) Public accounting and auditing agencies. This group has been of special interest to the SEC because of their access to white-collar violations of law.
- (3) Market regulating and sanctioning bodies, including such diverse organizations as the stock exchanges, the securities analyst and related organizations, the business bureaus, and manufacturers' associations. Included also are those bodies that certify the safety or standards of products, e.g., Underwriters Laboratories.
- (4) Sports regulation and sanctioning, particularly professional, intercollegiate and interscholastic regulatory bodies.
- (5) Not-for-Profit organization regulation. Of particular interest here are those regulating voluntary giving and accountability.

The second major class of private organizations are those assuming responsibility for the cost of white-collar violations of law.

- (1) All private profit and not-for-profit organizations. In an important sense, each private organization has important records of offending on the part of its members or as an organization. One recognizes that private as well as public organizations have important investments in keeping such matters secret both to prevent stockholder's suits in the case of profit making organizations and to prevent intrusion by law enforcement agencies. Yet it is not altogether clear that a sample of organizations and inquiry of them might not produce considerable information on patterns of law violation. Clinard's (1979) experience in securing information of law violations from large corporations and their subsidiaries suggests that direct inquiry may not be a fruitful means to pursue, but as yet there is no systematic comparison to test the utility of gathering information from private organizations.

- (2) Special Class of Insurors. There are a substantial number of special insurors, e.g., bonding agents, who should have considerable information on losses that must be covered by white-collar violations of law. This is especially true for fiduciaries where normally some form of bonding or insurance is required. Insurors are subject to fraud and there are a number of insurance investigating firms that must have considerable information on attempts to defraud (though many of their cases of fraud might not be white-collar law violations).

Private Intelligence Reporting Systems. Apart from private systems of detection, enforcement, and sanctioning, there are some major private reporting systems that regularly provide intelligence on white-collar crime. Several of these are considered below.

- (1) The News Media. The news media provide perhaps the broadest range of coverage of white-collar violations among any public or private source. The media attempt to cover major public and private sources and typically cover local and state as well as federal reporting of white-collar crime.

Just how complete and accurate the coverage of the news media may be in the aggregate remains for future determination. But the media are most likely to be a source of detecting and reporting certain kinds of white-collar crime. This is particularly true for certain forms of corruption of public office and their role in the genesis of

scandal (Sherman, 1978:67-91). The media also are a public source of disclosure on matters that both government and private organizations seek to keep private or secret. They have the additional advantage of providing unique identification of violators, conditions that Clinard (1979) used to increase his coverage of illegal corporate behavior.

Newspapers vary of course in the extent to which coverage is given to types of white-collar law-breaking and whether their focus is national, state, or local. The Wall Street Journal, for example, gives much attention to corporate transactions involving white-collar crime--but carries little by way of information on corruption of public trust, unless a business organization is involved. There are a large number of specialized trade newspapers as well. The extent to which news media, especially newspapers, may be used to estimate changes in white-collar violations of law needs careful investigation of their variability and limits.

- (2) Special Compendia. Almost every major regulatory area has special compendia, privately published, that contain information on selected kinds of white-collar violations of law. Trade Cases, for example, reports decisions and consent and litigated decrees entered in federal and state courts of the United States for cases involving possible violation of the FTC and antitrust laws. Such compendia often are useful where one seeks information on the unique identity of the violator that in turn may be related to other indicators. A recent example of the use of Trade Cases is the work of Staw and Szwajowski (1975:8-13) on how scarcity or munificence in the external environment of business organizations affects the commission of illegal acts.

There is good reason to assume that such private sources are especially important for research on white-collar crime or for the development of white-collar crime indicators where unique identification of violators is essential. Federal, state, and local reporting systems are generally under greater strictures to protect the unique identity of violators, though private sources generally use public sources to secure that information, e.g., of litigants in civil suits or of filings in criminal matters. Access to unique identification is facilitated by private compendia, however, and an inquiry into their diverse sources, whether of law reporting services, trade journals, or other sources, would seem worthwhile.

Private Sources of Information for Explaining White-Collar Law Violations or for the Bases of Statistical Indicators. Much of the information that is utilized for

studies of white-collar law violations that seek either to explain violations of law or to understand changes in statistical indicators, comes from private sources of data collection and reporting. Dun & Bradstreet's, the Fortune 500, and Business Week's list of corporations (Clinard, 1979:55) often are used to identify large corporations and salient facts about them. These, in turn, derive information from annual and other reports of corporations. Similarly, there are compendia on not-for-profit organizations, voluntary giving, and charitable and religious organizations that are relevant to studies of their violation of law.

Apart from the fact that such sources provide information that helps to explain variation in offending or other characteristics of white-collar crime, they also are important for obtaining information on the bases of white-collar crime indicators. The federal government, for example, does not maintain a list or compilation of not-for-profit organizations in the U.S. (though some estimates can be made from filings for tax exempt status). If one wanted a base of not-for-profit organizations to develop indicators of their rates of offending, for example, such estimates of the base population of organizations would have to come largely from private sources.

Finally, if one wishes to determine the effect of legislative and administrative changes on statistical indicators of white-collar crime, both federal and private sources are useful. Proposed rules and their adoption, for instance, can be monitored through the privately published The Weekly Regulatory Monitor or in the Federal Register which is published five times a week.

Learning About White-Collar Crime Not Detected or Reported to Law Enforcement or Regulatory Agencies. There are a number of different ways that an organization may increase its pool of information on white-collar law-breaking. Among the main ones are those that increase the size of the universe of potential law breaking, that increase feed-in from unofficial or external sources, that use alternative procedures for detecting information, or that take advantage of known properties to estimate unknown ones. We shall consider some alternative ways of knowing about white-collar law-breaking below. It is not our intention to explore these in detail since our major objectives include neither an assessment of the completeness of coverage of the official statistics on white-collar violations nor estimates of what they do not cover. Rather we do so to draw attention to the possibilities and limits of such alternatives, should there be an interest in probing the "dark figure" of white-collar law-breaking.

- (1) Sample Surveys of White-Collar Crime. A major alternative to official reporting systems is the sample survey. Perhaps the model survey for detecting crime that is unreported to law enforcement is the National Crime Survey (NCS). Using a national probability sample of households (and initially of business as well), the NCS carries out a survey of victimizations by crime by interviewing members of the household 14 years of age and older about their crime victimization experiences. That survey is limited to asking for reports on the seven major Part I offenses for which there also is reporting to the public police.

Although we could explore in some detail the possibilities and limits of surveys for estimating victimization by white-collar crime, we shall begin by a brief recapitulation of how one or more regulatory agencies currently use surveys to estimate white-collar matters.

One way that the sample survey currently is used is to determine the accuracy of information in an official reporting system where inaccuracies imply either errors or deliberate law-breaking in the reporting of information. The Taxpayer Compliance Measurement Program (TCMP) of IRS uses stratified cluster samples of filed returns to estimate errors in the reporting of tax liabilities. Experienced revenue agents and tax auditors from IRS's Examination Division do in-depth audits of the sample returns to estimate levels of accuracy in the reporting of information (Long, 1980).

IRS also uses the sample survey technique to determine the levels of compliance with the legal requirements for filing a tax return. Using area probability samples, IRS agents canvass the geographic areas to locate all potential taxpayers and then, by matching with filings, determine the level of nonfiling (Long, 1980). Here we see the sample survey used to estimate the rate of offending in the population at a point in time.

The National Electronic Injury Surveillance System (NEISS), previously described, is an excellent example of how survey design need not focus on compliance or violation behavior to obtain estimates. In that case, the consequences of products--their injuries--are the basis for the sample survey. Using hospital emergency rooms where serious injuries and deaths resulting therefrom are likely to be brought, the survey learns which are product related injuries. Detailed surveying for those injuries determines what products are involved in the injury and in what ways their cumulative frequency is used to determine product violation.

From time to time, an IRS office will undertake a reverse record check to estimate compliance with some aspect of the tax law. Since District Offices have some autonomy in devising strategies for determining noncompliance, such use of surveys is more local and sporadic. A good example is provided in a reverse record check study in the Portland District of IRS (Treasury Document 6532:1978). In that District, an attempt was made to determine the extent of compliance with the requirement that an occupational tax stamp had to be purchased for coin operated gaming devices and a Form 11B filed pertaining to it.

Intelligence from the Oregon State Police and the Special Investigations Division of the Portland Police Bureau provided the district IRS with a sampling frame of the names of taverns with gaming devices. Using this information, they matched their Form 11B's against the list and found that 31 percent of the taverns were nonfilers--an estimate of their noncompliance. Where noncompliance was found, search warrants were obtained for some and during the raids Form 11B was solicited. This enforcement activity, coupled with the survey, may have had an effect on determining that both the official and the police files underestimated noncompliance. This can be inferred indirectly from changes in the rate of filings from before the IRS action with raids after. In fiscal 1974-75, the year prior to the raids, there were 168 Form 11B's filed. Filings rose to 745 in 1975-76 and 963 in 1976-77 with the raid date August 4, 1976. Since the raids alone produced only 24 additional Form 11B's, it seems apparent that the deterrent effect of the raids was to increase compliance substantially for those not previously filing and not known either to the police or to IRS. (It seemed unlikely that most of the new filings represented new entrants into the gambling market.)

Surveying White-Collar Law-Breaking. Though the victim survey is the type of survey most common for ordinary crime, examples of victim, perpetrator, and event surveys are found in the area of white-collar law-breaking. The NEISS surveys of victims of product injuries leads to estimates of product violations. The IRS surveys of nonfilers of individual tax returns or of Form 11B are surveys to detect violators of the tax law. EPA's use of atmospheric pollution is an example of estimating levels of violation. Such surveys can also be used for point-source detection where that is applicable. The focus in such surveys is on the events or behavior, however, in the initial observation. We shall briefly review some of the limits of each major type of survey for determining the dark figures of white-collar law-breaking.

- (1) Victim Surveys. Though there has been no major effort to develop sample surveys of white-collar crime, the technology of crime victim surveys seems generally applicable. A consideration of its applicability, however, suggests there are five distinct limits to transferring survey technology to the estimation of white-collar victimization.

Firstly, for many types of offenses that might be classified as white-collar violations, the victim often is unaware of the victimization and therefore cannot report it. Many victims of consumer fraud, for example, do not realize that they have been defrauded. Victimization can also be diffuse in time and space. Where there are multiple causes of harm, attribution of harm or its sources can also be difficult. Violations of laws protecting the environment against degradation illustrate these difficulties of awareness of victims of harm and their sources. Harm effects, moreover, can be delayed in time, thus making both detection and attribution of source of harm problematic.

Secondly, the problem of ascertaining victimization is especially difficult when the victim is an organization. The main reason for this is that organizational intelligence on victimization itself depends upon a socially organized system for becoming aware of victimization. GAO and OMB investigations of computer fraud, for example, disclosed that most agencies were not organized either to secure their information system against fraud nor to detect it when it occurred. (Committee on Government Operations, 1977.)

Thirdly, some white-collar violations do not define a victim, since they are crimes of consent among perpetrators, none of whom is clearly identifiable as a victim.

Fourthly, victimization events are not always easy to identify from victim reports. It is not clear that victim reports can always be related to "same" or "common" events that led to the victimization. Suppose, for example, that each person in a common stock fraud scheme reports being victimized by stock fraud. There are first difficulties in determining whether these separate reports are related to the same single stock fraud scheme and whether they are to be treated as separate white-collar law violations or as a single event--a stock swindle. Unlike ordinary crimes, most victims will be unaware of any others involved in some common violations.

Finally, our definition of white-collar law-breaking makes it difficult to classify victimizations as white-collar unless the victim has information on the offender, i.e., to qualify as a white-collar violation, it must be known whether a position of power was used to commit the

violation and whether it was for illegal gain. Victims often lack such information, e.g., they were "defrauded" by having sent away for a product "through the mail." All in all, victims of white-collar law-breaking are in a less advantageous intelligence position to determine their own victimization than are victims of ordinary crime.

Though that is substantially true, it perhaps is also the case that victim surveys may assist victims to ferret out violations where the victim is only dimly aware of them or is unable to define them in any coherent way. A good example, perhaps, is provided by the way in which the Annual Housing Survey could be used to detect violations by landlords or owners--or at least violation states of the housing stock. This is a matter to which we shall return below.

- (2) Perpetrator Surveys. The prototypical survey of offenders or perpetrators of law violations is a self-report instrument where individuals are asked to report on whether or not they have broken the laws in a particular area, e.g., whether they have stolen property or whether they used a weapon to assault someone. Such self-report instruments do not lend themselves to the reporting of violations of law by organizations--though in principal one might seek such acknowledgement from persons acting in their organizational role. Yet the matter is by no means that simple, since for many organizational violations, there is no simple violator in an organizational role. No one quite pulls the trigger on acts of environmental pollution, on safety violations, or on false advertising or consumer fraud.

It is characteristic of some white-collar law areas that the emphasis falls on achieving compliance rather than upon sanctioning illegal acts. The "state of compliance" may involve not only highly technical matters but the violations themselves may be technical in nature, e.g., a late filing of a tax matter or of an SEC report form. Such violations may in no sense be deliberate on the part of individuals and the organizations they represent, hence, they may have little awareness of a "perpetrator" status. Even where an organizational role is not involved, individuals are not necessarily aware of their violations of law. This is particularly true in certain areas such as securities law where persons may not know of their obligations to file with the SEC. What characteristically are small scale stock swindles often are unsuccessful borrowing ventures where the borrower was unaware of the

necessity to file with the SEC. Many such cases of failing to conform to SEC requirements likely go undetected precisely because they turn into successful ventures.

Additionally, since many white-collar organizational violations may involve a substantial number of persons in carrying out the event, it is difficult to determine how individuals are to be related to the estimation of events. Many individuals may not know how many others were involved in the event, e.g., a stock fraud, and therefore, they are unable to provide information on their contribution to the violation. While perpetrator surveys thus may provide important information on some kinds of violators, they often may be quite unreliable as sources of information on events.

It would appear, then, that self-reports of compliance or violations of law are applicable in the white-collar area primarily in those kinds of violation where an individual is a lone offender or at most involved in small group offenses where co-conspirators or co-offenders are readily identifiable and known in terms of their role in the event. Where offending partners are more diffuse and the behavior involves complex organizational activity, the perpetrator survey seems less appropriate, particularly in the estimation of events.

- (3) Event surveys. Previously we have called attention to the fact that the proactive detection of violations depends upon the surveying of "events." Product violations, for example, are detected by surveys of harms to victims (NEISS). Environmental monitors of various kinds can be designed to detect events or states that constitute violations. One can do sample surveys of repairs, purchases, transactions, and a host of exchanges or states of events to detect violations. Indeed, it might be said that while the victim survey is the prototypical means of estimating unreported ordinary crime, the event survey may be the prototypical means of estimating unreported white-collar law-breaking.

What needs to be kept clearly in mind, nevertheless, is that the detection of events and their occurrence depends upon important properties of events. Where events are point-in-time, they are less likely to be recovered by conditions of violating. Systematic recovery of events depends upon evidence that the event took place or is taking place. Evidence of the state of violating, recall of that evidence by someone who either experienced the event directly as victim or as witness to it, and any on-going consequences of the violation are forms of legal evidence.

The longer the duration of events in time, the more they can be recovered by independent means, particularly by means of surveys.

Some events are characterized by the condition that they persist until such time as some action is taken to remove the state of violation. This is characteristic of certain kinds of transaction events--such as frauds--or code violations that can only be removed by bringing the violation condition up to code standard.

As Mileski (1971) noted in her study of building code violations, the existence of a state of violation is a poor indicator of the cause of the violation. Though landlords are responsible under the law for building code violations, Mileski observed that they were clearly causally responsible for only one-third of those conditions. Tenants were culpable in another third and both landlords and tenants contributed to roughly a third of all code violations. In monitoring environmental pollution, it commonly is noted that it is far easier to detect the condition of violation than to determine its source. Indeed, for some offenses, such as air pollution, the illegal dumping of pollutants, or the loss of nuclear materials, it is far easier to document the existence of the condition than it is to pin-point either the conditions of violation or the perpetrator.

Still, where the primary emphasis falls upon the detection of events, surveys of events may prove one of the more reliable means of estimation. Not only can individuals be used as sources of information on events, but for many kinds of events individuals need not be the primary or even a source of information. Event surveys are particularly appropriate where they do not need to rely upon the cooperation of individuals who may be implicated in their commission.

Some indication of how event surveys can be used to detect white-collar violations of law is provided by illustration from the Annual Housing Survey (AHS).

Although the survey is addressed to many issues relating to standards of decent, safe and sanitary housing, the AHS does not pursue questions of the extent to which housing law--criminal, civil or administrative--was applicable or brought to bear to attempt to remedy violations of housing law, at the initiative of occupants, of owners or of some outside agency. Were there interest, the AHS would be a splendid vehicle for determining the impact of law upon housing quality. For example, "Check items" would follow up mentions by tenants of unsafe, unsanitary, or indecent conditions to determine if formal complaint of violations had been made, to whom they have to be made, and the outcomes of these complaints. A more

general item might ask about any complaints made and about any remedies that had been effected either proactively or reactively as a result of legal, governmental or administrative action. It would also conceivably be possible to link small area data in the housing survey with coded housing and sanitary code data for the jurisdiction in which interviews were conducted to define the prevalence of certain violations.

The following are some examples from the current AHS that are relevant to standards often covered by law:

IIIB. 44a. At any time in the last 90 days was there a breakdown in your flush toilet; that is, was it completely unusable?

Yes

No (Skip to 45a)

b. Did any of these breakdowns last 6 consecutive hours or more?

Yes

No (Skip to 45a)

c. How many of these breakdowns were there?

1

2

3

4 or more

b. What was the (most common) reason you were completely without the use of your flush toilet for 6 consecutive hours or more - was it because of a problem inside the building or outside the building?

Inside - Specify problem

Outside - Specify problem

IIIB. 51a. At any time during the winter of . . . (year), was there a breakdown in your heating equipment; that is, was it completely unusable for 6 consecutive hours or more?

Yes

No (Skip to 52a)

b. How many times did that happen?

1

2

3

4 or more

IIIB. 29a. Are there loose, broken, or missing steps on any common stairways inside this building or attached to the building?

Yes

No

No common stairways (Skip to 30)

b. Are all the stair railings firmly attached?

Yes

No

No stair railings

IIIB. 61a. At any time in the last 90 days have you seen any mice or rats or signs of mice or rats in this house (building)?

Yes

No

b. Do you know whether they were rats or mice?

Yes, mice

Yes, rats

Yes, mice and rats

Don't know

c. Is this house (building) serviced by an exterminator regularly, only when needed, irregularly, or not at all? (Include only exterminator service for mice and rats)

Regularly

Only when needed

Irregularly

Not at all

Some Further Limits on Surveying White-Collar Law Violations

Apart from some limits that seem to characterize a given kind of survey, such as those of victims, violators, and events, the survey form of intelligence gathering presents other limitations as a means of exploring the dark figures of white-collar law-breaking. A number of these are considered.

- (1) Technical limits. Perhaps more so than in ordinary crime, white-collar violations raise important issues about the technical measurement of events. Some infractions of law occur where there are precise standards or levels of compliance. Such standards are matters of technical measurement, e.g., the probability of the occurrence of an event, the level of safety, or the quality of performance. Precise standards do not lend themselves to ordinary systems of detection and reporting such as the sample

survey. If they are to be measured by surveys, the survey will have to provide for technical measures of compliance or violation.

- (2) Behavior to Avoid Detection. The dark figure of crime may be more substantial for white-collar than ordinary crime precisely because more attention is directed to cloaking the occurrence of white-collar than ordinary crimes. Most ordinary crimes are point-in-time events and violators have little opportunity to take steps to cover their offense once it has been committed. But some forms of white-collar crime, as Katz (1979) observes, are characterized by elaborate forms of violator behavior to avoid detection. Perpetrators structure the occurrence of the violation so as to make it difficult to detect its occurrence and, if detected, to determine who committed the crime. These built in forms of deception and disguise may also operate in the survey. Little is known about whether and in what ways offenders practice deception in surveys but conscious strategies to avoid detection may carry over into the survey mode of data collection as well.
- (3) Limits of sampling. It is no simple matter to devise sampling strategies for any of the three major types of survey previously described. Where organizations are the group to be sampled, one is faced with the fact that few sampling frames exist for organizations and area probability sampling frames do not lend themselves readily to sample selection of organizations.

Secondly, there is the problem that the probability of many white-collar events is very low. There are relatively few victims of stock swindles, for example, and the likelihood of sampling one or more victims of such infrequent events in a national sample survey is low. Indeed, very large samples may be necessary to detect many forms of white-collar law violation. The sample survey thus may be limited to estimating only highly frequent types of law-breaking, e.g., consumer fraud, deception on income tax returns, or housing violations.

- (4) Procedures for the Generation of Complaints. Organizations vary considerably in their dependence upon proactive as compared with reactive strategies of mobilization to detect violations of law. There are a number of different tactics organizations may use to increase their information on violations. Both

internal and external complaint organizations can be developed to increase knowledge of law violation.

One of the major forms of complaint generation is the development of an independent and specialized office to receive complaints, including anonymous complaints. The most common form of this, originally developed by newspapers, is the "Hot-Line." During 1979, the Government Accounting Office (GAO) developed such a hot line to take information on waste, fraud, and illegal activity involving government employment or expenditures. The GAO takes the information from the hot line and refers the matters to the Inspector General departments or to other officials for investigation. One GAO report, according to the Washington Post (December 10, 1979) stated that almost two-thirds of the tips were from anonymous callers. Roughly a third of all calls were said to have been dismissed as having no merit even for initial investigation or because they lay beyond federal jurisdiction. During the first nine months of the hot line, there was an average of some 800 calls a month.

Agencies also can establish their own complaint office, which is what each of the Inspector General offices attempts to do. To encourage employees to report openly and directly, the Congress has provided legal protections to "whistle-blowers." The Safe Drinking Water Act, the Toxic Substances Control Act, the Occupational Health and Safety Act, and the Clean Air Act, for example, provide specific employee protections for those disclosing their employer's violation of these laws. Yet it appears that "whistle-blowing" is not a very common form of increasing the detection of otherwise unreported violations of law.

Uses and Needs for Data on White-Collar Violations of Law

There is some question about whether it is worthwhile to develop statistical series on white-collar law-breaking. Skepticism is expressed over their value, given controversy over Uniform Crime Reporting in the United States. The difficulties in making cross-section estimates with a reasonable degree of accuracy is commonly used to challenge the legitimacy of any time series of which they form a part. We shall present briefly some of the argument for developing and reporting statistical series on white-collar violations of law.

Engineering, Intelligence, Enlightenment Functions of Statistics

There unfortunately is no simple way to identify the current or potential demand for over-time series on white-collar violations of law. All statistics, however, may serve intelligence, enlightenment, and engineering functions, though they more commonly serve enlightenment than engineering functions (Biderman, 1970:225). In the engineering model, a small number of variables are manipulated to achieve practical environmental changes or control. The enlightenment model--its opposite--is important in producing change, but the changes are not planned in the model. Rather, they occur because of the model's general properties and the enlightenment casts on a particular instance. The intelligence model is somewhat akin to that of engineering, though it is geared more to adaptive than manipulative strategies--more to management by adaptation to consequences than to management by manipulation of the causal elements.

We can see that each of these models governs the production of some kinds of statistics on white-collar crime.

Engineering models. The engineering model is most clearly being pursued in the development of prevention and detection strategies for white-collar crime, though with the management manipulative rather than adaptive strategies in mind. A number of Inspector General's offices are developing models to prevent losses due to fraud, dishonesty, and management. Such models attempt to analyze the results of past audits, investigations, and other detection strategies to identify vulnerabilities in program operations, policies, and management that are conducive to waste (DOL, 1979:4). The information developed in these models ordinarily is organized as a feedback process and used to alter program operations. The effects of these management changes are continuously monitored for their effects and for feedback. The emphasis in these models clearly falls upon taking actions to prevent violations rather than simply to monitor and report them.

A second class of engineering models is almost equally sophisticated. They are designed to increase levels of compliance in a regulatory system. The model usually programs a strategy for isolating the major components producing undesired effects (or in crude versions simply of the kind and level of effects whose causes are presumed) and then for taking and monitoring actions to change the level of compliance. Pollution control models and those for monitoring environmental health and safety fall into this category. Perhaps among the most sophisticated of these is the previously-described NEISS system designed to detect

unsafe products, determine the source of their harm, and providing for compliance by altering the conditions producing harm.

Models also have been developed for State as well as national programs to detect potential fraud by means of computer aided detection systems (Lange and Bowers, 1979:67-71). These computer detection cases then become the basis for further investigation to determine the nature and extent of violation.

Intelligence Models. More common are the simpler adaptive management models that rely upon the statistical information systems to provide intelligence to which management can adapt. There are several major models of this kind. The first are designed to produce information to govern the nature and kinds of audits an agency will conduct to increase the pay-offs in its detection or investigation strategies. We have illustrated this in IRS's use of TCMP and the development of DIF, a formula to select returns for audit. The second class of models are designed to estimate manpower needs within the organization using stock and flow models. The information system commonly is used to demonstrate that current resources are sufficiently productive so as to warrant their increase in future budgets to raise the total return.

Enlightenment Models. The statistical information of any agency provides a great deal of enlightenment information. Recent research on white-collar crime is based on over-time information from regulatory agencies (Shapiro, 1980; Scott, 1980). None of these systems was designed with research objectives in mind; yet they all contribute substantially to them. An example of enlightenment using statistical information generated for other purposes is provided in a report giving estimates of income unreported on individual income tax returns prepared by the staff of the Internal Revenue Service (1979). Though the information sources were generally deficient, some estimates of total "unreported income" from illegal activities was made by using estimates of the volume of illegal drug traffic in 1977 prepared for the National Narcotic Intelligence Committee; information from the FBI and from state and local police departments was used to derive estimates for gambling and prostitution.

Needs and Priorities for Information. Users will vary considerably in their needs and priorities for information. Management information systems generally want quite specific and timely data so that daily, weekly, monthly, and quarterly information is required. Where the information is used to detect noncompliance, the information is required in a highly disaggregated form.

Although administrators have some use for aggregated and summary indicators in the white-collar crime area, they are more likely to pertain to projections that affect their request for resources. They are apt to be disaggregated for operating units of the organization to show different levels of demand and supply within the organization.

The requirement for summary social indicators is more generally a matter for enlightening the general public or special interest groups which monitor social change. These highly aggregated indicators, whether of violating or offending, are of use also for more sophisticated projections of change in the society and as enlightening for policy makers.

Research investigators, like managers, often demand highly detailed information. Unlike administrators, however, their demand is less immediate and they are more likely to be interested in having information comparable over time. Research investigators also are more likely to require information on the accuracy of figures provided by an agency.

Relationship of Indicators to Goals of Society. Just how indicators on white-collar crime may relate and may not be related to the general goals of society is provided in a cursory examination and assessment of the reporting of white-collar crime data in the Statistical Abstract of the United States, 1978. Especially noteworthy is how white-collar crime indicators are tied more closely to some and not other economic goals of the society and of how they are generally deficient in assessing the efficacy of social control in the society.

The Statistical Abstract of the United States, 1978 was searched for entire tables or entries within tables, which definitely, or possibly, reflected primarily white-collar illegalities, or activities for dealing with them. The only data presented that relate directly to illegalities, enforcement, compliance, or WCC enforcement resources appear in the section of the Abstract on "Law Enforcement, Federal Courts and Prisons."

It is noteworthy that next to nothing is to be found with regard to the operation or effectiveness of the legal normative and control systems in any of the chapters dealing with the economic and public sectors of the society. In these other chapters, it is as if fraud, coercion, fraudulence, criminal negligence, legal regulation and compliance or noncompliance with law, play no significant role in social life.

The first set of tables of Section 6 are primarily UCR Part II data, with some supplementation from the National Crime Survey and from Public Health Service data (homicide and suicide). The only pertinent information here is in three tables (Nos. 306, 307, 308) on arrests and persons charged, which include Part II "All other [than 'Serious'] Crimes." The Part II offenses which might involve a heavy admixture of white-collar crime are the following: Forgery and Counterfeiting, Fraud, and Embezzlement. The primary utility of these tables is to suggest strongly that the large majority of arrests under these categories probably do not involve offenses falling within our definition of white-collar crime. This conclusion follows from the fact that very high percentages of the persons arrested or charged under these offense categories are children or youths, and are Negro. The Negro/White ratios are as high for these offenses or higher than for all the "Serious Crimes" combined. The percents under 25 years old of those arrested and of those charged are not dissimilar from the percents for Part I offenses, except for Burglary, Larceny and Motor Vehicle Theft classes. Here the more white-collar crime-relevant categories are less lopsidedly youthful. The same inferences also follow, and more decidedly so, from the age and race data for the crimes of Arson and Stolen Property, which may sometimes be white-collar crime, but apparently rarely so when it comes to either arrests or charges.

Tables on criminal justice system expenditures and employment and legal services provide no specific white-collar-crime-relevant entries.

The time series, 1969-1977, on "Authorized Intercepts of Communication" (No. 313) includes one white-collar-crime-applicable line, the line for the offense "bribery."

An important relevant table (No. 316) presents data on "Federal Prosecutions of Public Officials and Employees, 1970 to 1977." Of possible indirect pertinence is Table No. 322 on "U.S. District Courts Civil Trials Commenced and Terminated," by nature of suit, including the category "Actions under statutes." Table No. 323 presents series on U.S. District Courts criminal trials. In Table No. 324, these trials are broken by offense, including the pertinent categories "Embezzlement and Fraud" and "Forgery, Counterfeiting."

Another particularly relevant table is No. 332, "Average Time Served by Prisoners Released from Federal Institutions for First Time: 1965-1977" which has a section by offense. The following pertinent offense categories appear: Counterfeiting; Embezzlement; Forgery; Fraud; Income Tax; Securities, transporting false or forged. Data on the races of federal prisoners under sentence appear in Table No. 333, again disclosing that a disproportionately

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high percentage of the federal prisoners serving time for most of these partially white-collar offenses are other than white. Notably, however, the average sentence is decidedly lower for the non-white prisoners in each of these white-collar crime-related offense categories.

The last table worth mention is No. 334 from LEAA's Survey of Inmates of Local Jails that includes a block on "Prearrest annual income." The top class interval is \$7,500 (less than 10 percent of the inmates fall within it).

Our scan of Statistical Abstract yielded only two items of pertinence in other sections.

One of these sources is Table No. 1098 on "Motor Vehicle Safety Defect Recalls . . ." As it stands, however, it can only be regarded as pertinent by way of a radically extreme application of affirmative responsibility notions.

Within Table No. 911, a series on "Property and Liability Insurance," there is a line for the dollar amount of surety and fidelity insurance. This line does not by itself provide important direct information for our interests, although it is a measure of one economic cost of the presence of defaults and miscarriages in our economic life. In ratio measures using economic activity levels as the base, it is a series that might be of interest. With either direct information on the claims paid or from the overhead and profit figures for this line, one might derive estimates of defaults and miscarriages by important economic actors even from simple data on premiums. Or, some order of magnitude estimate might be made by assuming this line does not differ greatly in its payout ratio from that for all lines of insurance.

Criteria for a Compendium

The neglect of data on illegalities in a general statistical source such as the Statistical Abstract may be justified by three propositions:

1. Important implications of the data that are presented would not be fundamentally altered if the data on the illegalities were taken into account; that is, whatever system is being described by data included in the compendium is not affected by illegal activities in a highly important way.
2. Information does not exist that allows one to determine whether the first proposition may be true, or not true.

3. Statistical data do not exist that permit any remedy, when the first proposition is untrue; that is, although taking illegal activities into account might alter important interpretations of the data presented, pertinent information on illegalities is not available in acceptable statistical form.

Various sets of data to which our project has attended indicate that one or more of these propositions often do not apply to information contained in the Statistical Abstract. For example, the demographic significance of long time series on abortions is markedly altered if estimated rates of illegal abortions are taken into account as well as the legal abortions that are reported in the Statistical Abstract. Fraud in benefit programs is important to take into account in using the extensive data on government programs reported in the Statistical Abstract, for example, in appraising the impact of benefit programs on the dimensions of social problems at which these programs are directed. The Abstract does include a table (No. 561) on "Errors in Government Payments for Selected Public and Health Care Programs: 1976" which deals exclusively with payments to ineligible AFDC, SSI, and Medicaid recipients. No similar data appear with regard to government payments to recipients who would fit our project definition of "white-collar." Series presented in the Statistical Abstract on bank failures would have greater clarity for interpretation of the consequences for banking of general business conditions if failures due to fraud and other white-collar illegalities were identifiable. The Abstract does include information on defaults by consumer installment buyers (Table No. 876), but not on defaults by users of business credit.

Further examples are readily apparent in the series. Regularly, estimates are made of the importance of legitimate drug production and distribution but none is reported for enterprises for illicit drug abuse in the U.S. Such information is important for evaluating the future economic prospects for this industry, quite apart from any illumination it may shed on the structure of drug abuse. The Statistical Abstract also does not contain EPA data on noncompliance with water pollution standards in the U.S.

In considering the importance of developing statistics on white-collar illegality, it would be extremely useful to further develop and document these and a host of other examples.

Economic Significance

There is a more fundamental way, however, in which the neglect of crimes and other illegalities affects the interpretation of data contained in the Statistical

Abstract. The Abstract contains a large volume of data which is dependent for its interpretation, at least in part, on a systematic theory of value--that of economics. All of the value transactions of the economy figure in aggregates which are measures, calculated in dollars, of more or less value--values produced and values received, by various actors in the economy, as well as for the economy as whole. The model of economics assumes that departures from the assumptions it makes in taking price as a measure of value (including volume of activity as measured by unit price X quantity) are sufficiently unimportant so that they may be neglected without fundamental impairment of the informational usefulness of the data where money is taken as a least common denominator of value. Many of the laws that define white-collar illegality are aimed essentially at bringing the economic life of the society into accord with the assumptions of the model.

Perhaps the central question confronting the white-collar statistics problem is assessing where in the economy the assumption of trivial effect of illegality is not tenable. Second only to the difficulty of generating data that will serve to answer this question is the problem of how the economic indicators which depend upon the assumption of trivial effect may be altered where it is established that the assumption is radically in error.

Conclusion. We have described the major sources of information that arises in official reporting systems on white-collar law-breaking and their limitations for a uniform reporting of white-collar crime. Suggestions have been made regarding the requirements of a uniform reporting system. Later chapters explore some of the implications of collecting and collating information from diverse official sources.

Apart from official systems, we have noted that some forms of the survey are institutionalized as proactive means of detecting white-collar violations of law. The event survey perhaps is a prototype of sample surveys in white-collar crime reporting. Victim and perpetrator surveys appear of limited relevance and use, though further exploration of their possible value may be worth undertaking.

III. INFORMATION SYSTEM BARRIERS TO THE DEVELOPMENT OF STATISTICAL REPORTING OF WHITE-COLLAR VIOLATIONS OF LAW

The Organization of White-Collar Law Violation Statistical Reporting

Our discussion of the needs and uses of statistics on white-collar law violations called attention to the existence of some federal information and statistical reporting systems that were developed for engineering, intelligence, or enlightenment goals common to various types of regulation or to meet law enforcement or regulatory objectives peculiar to particular laws or agencies. Each of these systems is somewhat happenstance, though they increasingly conform to notions of management by objectives. The most recent example is the development of new forms of information gathering following the enactment of Public Law 95-142 (Inspector General's Act) in 1978. The Act, among other things, provided for the establishment of fraud control units with mixed teams of auditors, attorneys, and investigators to prevent and control fraud, abuse, and waste in publicly funded programs. Subsequently the executive branch civil departments with major program responsibilities established such units with enhanced statistical information capabilities.

Our purpose in this section is to outline some general models that underlie statistical reporting systems so as to advance the argument that systematic attention to developing the statistical reporting capabilities of such models will enhance the usefulness of the statistics collected, utilized, and reported. We are concerned with models adaptable to intelligence, engineering, and enlightenment functions of statistics. Social control models are the first type we will consider.

Social Control Models

There are general frameworks and special theories of social control that are particularly relevant to the development of statistical information systems on law enforcement and regulation. These frameworks and theories underlie much of the rhetoric and practice of law enforcement and regulatory management. They also afford descriptions and explanations of the social control of illegal behavior. We shall describe several of these frameworks and theories as models of social control that can usefully organize statistical information systems. The reader should bear in mind that the more systematically such models are developed for a given agency and its objectives (or for the law enforcement objectives of a set of

agencies), the more likely one is to approach a uniform system of statistical information on white-collar law violation.

At the risk of redundancy, it may be worthwhile to recapitulate the underlying concerns of those agencies of social control that deal with white-collar law-breaking. Generally speaking, the regulatory and enforcement activities of agencies generate records of how the agency came to regard matters as related to their regulatory objectives or as matters that otherwise are potentially violations of law. The regulatory and enforcement matters with which most agencies deal do not arise in the form of criminal complaints, prosecutions, and actions. Rather, what comes to be regarded as a criminal matter always is problematic at the point an agency is mobilized to regulate conduct or to enforce the law. What is to be regarded as criminal will depend upon questions of law, jurisdiction over criminal matters, alternatives for treating matters by sanctions, and the powers of organizations to sanction conduct.

Typically, the executive departments and regulatory agencies or commissions of the Federal government treat white-collar law violations without invoking the criminal process. From the broader perspective of the social control of white-collar violations of law, therefore, what agencies refer for possible prosecution as criminal matters may be of less interest than the infractions of law that they may treat as administrative or civil rather than criminal matters. Given the existence of administrative and civil alternatives to criminal handling white-collar law-breaking, what is of interest is the social organization of the detection, interpretation, processing, and sanctioning of law violation. We shall begin by looking at models for the mobilization of law enforcement and the regulation of behavior.

Mobilization of Law Enforcement Models. Our knowledge of violations of law depends upon socially organized systems of knowing (Biderman and Reiss, 1967). A major concern of law enforcement and regulatory agencies is to assess the adequacy of their efforts to detect violations of law. One way to assess our knowledge of white-collar law violations is to view their production from the standpoint of the social organization of the systems that detect white-collar violations of law. How an organization comes to know about law violation depends upon its mobilization strategies to detect violations in its environment. The organization can rely primarily upon agents who are outside of it and who are not under its control to bring matters to its attention. Only then does it react to these matters by investigation and other forms of resource mobilization (reactive mobilization). An organization also may seek out violations

in that environment by organizing its own modes of detection (proactive mobilization). One must also bear in mind that these proactive and reactive strategies of mobilization pertain to both internal and external environments of an organization, i.e., there are both internal and external environments and internal and external intelligence capabilities related to these environments. Finally any organization is to some degree permeable by other organizations. Any organization lies in the environment of other organizations and information about it is available to these organizations. Any organization, moreover, can become an object of information for some specialized organization whose function it is to audit or monitor a class of organizations. While some penetration of an organization's information system may be required by law, as in an IRS tax audit, some may be acquired by private information systems, as in credit ratings.

Before turning to a consideration of enforcement and detection in white-collar crime, we shall briefly illustrate these models of detection for traditional policing of ordinary crime where they first were developed. Model I of archetypical police organization to detect violations of law emphasizes that a police department of any reasonable size will develop an intelligence capability for both its internal environment (what violations occur for its personnel and for the organization) and for its external mandate. In this case, the external mandate of a police department is one of law enforcement so that it will have highly specialized detection systems to detect violations in the external environment. It may also use preventive patrol to deter violation or to secure compliance. Technically one might regard premonitory and preventive strategies as falling outside detection strategies, although they do have quasi-detection aspects. Preventive strategies always are selective with respect to environments and thus like enforcement strategies generally can lead to displacement of violations for detection. Every organization has some elementary form of external intelligence. A business organization, for example, may secure information on its competitors, their prices, etc. Ordinarily, an organization's internal intelligence is more elementary in form than is its external intelligence. Nonetheless, the reverse is the case for some organizations. Some businesses, for example, may have elaborate proactive means of detecting employee theft.

FIGURE 3.1

MODEL I: ARCHETYPICAL POLICE
ORGANIZATION OF DETECTION OF VIOLATIONS

MOBILIZATION STRATEGY	ENVIRONMENT	
	INTERNAL	EXTERNAL
PROACTIVE	Personnel screening Inspector general tests of compliance Internal audits of operation or efficiency (Internal Inspections)	Preventive patrol Detectives in vice, narcotics, etc. Traffic Surveillance of behavior or use of informers
REACTIVE	Investigation of complaints by special units, e.g., Internal Affairs, or Internal Intelligence Assignment to Supervisors for Investigation of Complaints, etc.	Detective Investigation of complaints or referred cases Dispatched Patrol

Turning to Model I, above, of our archetypical police organization, one can see that there are rough parallels in both proactive and reactive forms of mobilization. Proactive detection strategies depend upon audits and inspections for internal operations and upon surreptitious penetration of an external environment on the other. Plain clothes detectives who pose as civilians and use civilian blinds for surveillance, or informers who are the civilianized detectives, are examples of such external penetration. In both cases the detection power arises from using conventional civilian roles or audit and inspection techniques of investigation. Similarly both for internal and external responses to detections or complaints, one either uses the services of a specialized investigation unit or an all-purpose one designed by the organization for response to detections by others whom the organization serves.

FIGURE 3.2

MODEL II: ARCHETYPICAL ORGANIZATION TO
DETECTION VIOLATIONS BY POLICE ORGANIZATIONS

MOBILIZATION STRATEGY	POLICE ORGANIZATION	
	INTERNAL	EXTERNAL
PROACTIVE	Audits of police records by external auditors Investigative journal- ism exposes corruption scandal or illegal activity	Civilian observers of police practice, as in ride-along programs Investigative journal- ism by observation of police behavior or interview reports with clients
REACTIVE	Public Commissions of Inquiry (Knapp Commis- sion, Civil Rights Commission, etc.) Legal intervention, e.g., Subpoena of records	Civilian Review Boards for complaints about police behavior or practice Civil suits against the police

Again in Model II of archetypical organization to detect violations by police organizations, it can be noted that there are parallels in the strategies followed in detecting violations internal to the organization or in its external relations with its environment. Audit, observation, and investigative journalism are the principal proactive means while boards of review and legal strategies are the primary reactive means of detecting violations by police organizations.

What is important for our purposes is that while all of these proactive and reactive strategies of detection produce information on law violation internal to an organization, whether in its relationships with its environment or concerning its law enforcement mandate, not all strategies of detection organization are likely to produce systematic information nor to do so on a continuing basis. Later we shall explore how these strategies are related to the genesis of statistical indicators. Here we would simply note that regular audits, inspections or investigations and responses to complaints are more likely to produce systematic indicators--whatever their biases--while

commissions of inquiry and investigative reporting are less likely to do so. In general, the strategies of a continuing organization are more readily geared to the systematic production of detection information, whether it be internal or external to the organization. One can get systematic data on police misconduct from internal or external review boards, for example, though they may differ considerably in kind, quality, and quantity.

Having explored only the outlines of these mobilization models for public police organizations, we shall now attempt to generalize for regulatory law enforcement agencies as an organizational class--the organizations that typically detect white-collar violations of law. Reference is made to Model III, an archetypical regulatory enforcement agency for detecting violations. We shall discuss this model in somewhat greater detail using the practices or detection strategies in one or more federal regulatory agencies or programs as examples.

FIGURE 3.3
MODEL III: ARCHETYPICAL REGULATORY
ENFORCEMENT AGENCY FOR DETECTING VIOLATIONS

MOBILIZATION STRATEGIES	ENVIRONMENT	
	INTERNAL	EXTERNAL
PROACTIVE	Internal AUDITS of organizational records, practices, etc.--usually designated Audits	Reporting requirements submitted by agencies Self-reporting of violations required Audits
	Internal Inspections by monitors, tests, etc.	Monitoring systems to detect violations Inspection systems to detect violations
REACTIVE	Investigation of complaints arising internally and externally on personnel	Complaint investigation procedures on external referrals under agency mandate
	Referral for criminal prosecution	Referral for criminal prosecution

Model III divides mobilization strategies of a regulatory agency into four major types by relating proactive and reactive strategies to the organization's internal and external environments, although quite commonly an organizational unit will combine proactive and reactive strategies of enforcement. Usually, agencies separate internal from external affairs, but some units include both. Thus we cannot discuss these strategies as neatly organized within regulatory agencies. For that reason we shall describe the major strategies in terms of their modalities within regulatory agencies, pointing out how in actual practice they are organized in different ways.

(1). Internal Affairs/Inspections. One of the basic strategies of internal enforcement is to initiate investigations designed to detect employee violations (proactive) or to investigate complaints about employee misconduct (reactive). These strategies are commonly organized into operating units known as "Internal Affairs," (Department of Labor), "Internal Security," (IRS), or "Internal Inspections," (U.S. Postal Service), though the unit may be known by other names, such as is the case with the "Office of Professional Responsibility" in the U.S. Department of Justice, or it can be a function lodged within an "Office of Investigations," (HEW, HUD). In most federal departments and regulatory agencies, internal inspections or affairs divisions typically have both proactive and reactive functions, though they are disproportionately organized to react to complaints by conducting investigations of allegations of employee misconduct. For a variety of reasons, including constitutional limits on some forms of proactive investigation of employees, federal agencies are less likely to use proactive than reactive means to detect employee misconduct.

Public Law 95-452 (October 12, 1978) made it mandatory that each executive department establish civil agency inspector general systems with the primary responsibility for detecting "fraud, waste, and abuse." Inspector General's offices thus must assume responsibility for external as well as internal detection of loss of these kinds. It remains to be seen how internal and external functions can be carried out within the same organizational unit of each Inspector General's office. One possibility is that internal inspections will be scanted in favor of proactive external inspections--though to the degree that the latter involve employee misconduct the "internal" function is fulfilled. Where an executive department has few if any external programs for which the legal mandate is generally applicable, as is the case with the Department of Justice Office of Professional Responsibility, it will continue to operate primarily for internal inspections and to investigate complaints about employee misconduct. But

where, as in the case of HEW, there are many substantial programs that involve fraud and abuse in their external operations, one would expect far less emphasis on internal inspections. For these reasons, interagency comparisons of internal inspections may be quite misleading.

While Public Law 95-452 made inspector general systems mandatory for executive departments, they are not mandatory for most independent regulatory agencies. Agencies such as MSHA, OSHA, and EPA depend solely upon their supervisory system to detect and investigate employee misconduct. In general, then, for civilian agencies, inspector general functions over internal affairs are limited to executive departments and little information will be obtained for any independent regulatory bodies or commissions or for the organizations attached to the legislative and judicial branches.

Though there is some question about the accessibility of information, the military organizations have had inspector general (and audit) units almost since their inception. The organization of the U.S. Army perhaps is prototypical, with a system having been established in 1777. The Army's Criminal Investigation Division has primary responsibility for misconduct by military and civilian personnel in the course of duty or employ. In addition, the Army has an Investigation's Division that looks into all allegations against general officers and senior Army civilian personnel as well as some matters concerning misuse of Government funds, property, and personnel. It also has jurisdiction over cases in the National Guard and Reserve components. Some personnel misconduct matters derive from the regular audit (inspections) functions of the Army as well. Regardless of their source by investigation, however, all criminal matters are referred to the Army Criminal Investigations Command for processing.

The Defense Logistics Agency (formerly the Defense Supply Agency) is an organization with responsibility for providing a wide range of supplies and logistics services for all programs of the Department of Defense. Its Inspector General has responsibility for three functions--inspections, complaints, and noncriminal investigations (Comptroller General, 12/27/79:2). Generally the inspections refer to the assessment of whether an agency is fulfilling its mission effectively, while complaints and investigations units devote attention to matters that are more likely to be white-collar violations of law. The inspection functions tend to dominate the workload of the Inspector General.

But it would be mistaken to assume that internal affairs will be organized in the same way, even among agencies within a given department. This can be illustrated

by reference to the U.S. Department of Justice. Although each of the bureaus or services within Justice must report employee misconduct charges to the Director of the Office of Professional Responsibility when actions are to be taken against employees, the agencies vary considerably in how they organize proactive investigation into internal affairs. The Drug Enforcement Administration, for example, has a small proactive undercover unit to detect employee violations in their enforcement duties. The FBI, until quite recently, lacked an internal affairs structure comparable to that of a police agency. The Criminal Division of the Department investigates criminal allegations against employees other than members of the Division. In brief, the divisions within Justice with responsibility for law enforcement or investigation of criminal matters are moving toward an internal affairs structure, but some of the organizations as yet are rudimentary in form.

There similarly is considerable variation among the bureaus or services within the Department of the Treasury. The Internal Revenue Service has long had a special proactive organization, the Internal Security Division, that makes character and security investigations of new employees and investigates allegations of impropriety against employees already on the rolls. It also "... protects the integrity of the Service by investigating high risk areas and alerting managers and employees to integrity hazards" (Internal Security Division Annual Report, 1977:70). The IRS unit thus combines proactive investigation with reactive investigation of complaints in its Internal Security Division. There is no comparable well-developed internal affairs division in the other major Treasury units--although Customs has an elementary organization.

(2). Internal Audits. There are a number of different forms of internal audit. A principal--perhaps the principal--means of internal audit is audit by methods of accounting. Yet quite commonly internal audits embrace a broader set of techniques, such as observation and investigation of operations as they take place. These can range from the development of special inspections designed primarily to assess the efficiency of operations to ones designed primarily to detect employee misconduct. An example of the latter is the Internal Audit of IRS's Inspections Service: "Internal Audit gives priority to the detection of fraud, embezzlement, or other wrong-doing on the part of Service employees or others' attempts to corrupt Service employees." (Annual Report, 1977:70).

Although internal audits by methods of accounting are required at some point in any federal agency, the internal audit is less likely to be designed to detect employee misconduct than is the external audit of agency programs where employees are involved in large scale programs that

handle substantial funds--programs where fraud and abuse or embezzlement by employees seem more likely to occur. Generally, there are fewer internal than external audit reports for an agency. The Department of the Interior, for example, noted 36 internal and 322 external audit reports for the six-month period ending September 30, 1979 (DOI, IG, 1979:11).

Provision for internal inspections and internal audits depends then to a substantial degree on the extent to which an agency perceives it has an investment in programs that provide opportunities for employee misconduct. Where such opportunities seem negligible, far less attention is given to any proactive program of detecting employee misconduct. If the volume of complaints against employees also is negligible, reactive investigation is handled by some other office in the organization or by referral to the FBI or the (formerly) United States Civil Service Commission.

The history of the development of internal inspections units within civil agencies provides some support for the idea that internal inspections organization develops where there are substantial opportunities for employee misconduct. Both scandal and exposure of large-scale fraud and abuse seem largely responsible for the creation of such units in agencies and departments. Public Law 95-452 mandating inspector general systems in each civil department is itself a consequence of wide-scale exposure of fraud opportunities. Prior to its enactment, only HEW, IRS, and DOJ had major internal units. In each case, these can be traced to scandal and exposure of wrongdoing. The early 1950's scandals of employee misconduct in IRS led to a substantial change in how such behavior was handled and the creation of an Internal Inspections Service with audit and internal security functions. The Office of Professional Responsibility in DOJ was created by Attorney General Levi following exposures of misconduct in the FBI and the realization that because each unit within DOJ had sole responsibility for policing itself, there was no provision for departmental review of that policing. The HEW units similarly came about through exposure of fraud and abuse. Some programs in the Department of Agriculture have responded similarly to scandal.

Examination of a number of Inspector General semiannual reports for major agencies discloses, as one might expect, that the major emphasis has fallen upon the detection of fraud and abuse in an agency's operations, as Public Law 95-452 mandated. Detection of employee violations occurs primarily as part of investigations and audits of these programs. Clearly what emerges is a detection strategy that operates pretty much program by program. In the case of larger agencies, such as HEW, and DOL, the agency, given manpower constraints, selects for inspection, audit, and

investigation, programs that provide the greatest opportunities for fraud and abuse (HEW, IG Annual Report, 1978, 1979:1; DOI, IG Annual Report, 1979:7; DOA, IG Annual Report, 1979:1).

The annual reports of Inspector Generals of program agencies make abundantly clear then that the major emphasis falls upon detecting violations in the external environment--how to detect fraud and abuse among those who provide services or who are the recipients of federal program funds and services. In some cases, no information is given separately for employees of the department as compared with all other violators (USDA, 1979; HEW, 1979). In other IG reports, such as that of the Inspector General of HUD, limited information is given on a small number of cases where there are criminal indictments (HUD, 1979:56). Least common is a report of complaints and investigations against employees (DOL, 1979:40).

Thus the kind of internal affairs model that one finds in a collection and enforcement agency such as IRS, or in a non-program fund agency such as DOJ, where considerably more attention is given to internal affairs, is somewhat less apparent in agencies that have substantial responsibility for programs that provide opportunities for fraud and abuse.

(3). External Inspections. The use of external inspection systems (as is generally the case also for external audits) depends in part upon the enforcement mandates of an agency. For some agencies--generally the Executive Departments--the agency has a substantial responsibility for the administration of programs that involve large amounts of public funds. HEW, for example, has substantial programs in Health Care, Student Financial Assistance, and Income Maintenance that provide substantial opportunities for such abuse and inspection and audit programs are developed to detect such violations. This is similarly true for the public housing, mortgage, and other loan programs of HUD.

Inspection and audit programs designed to detect primarily fraud and abuse violations in an agency's programs differ from those of agencies with mandates for law enforcement or for regulating the behavior of persons or organizations in the external environment.

We shall treat first those agencies whose primary mandate is to enforce the law or regulate behavior under the law. Though not commonly recognized, one of the major proactive means for detecting violations of law are inspection systems designed for such purposes. For some agencies, almost the entire enforcement program rests upon inspections. This is true for such widely different agencies as Mine Health and Safety (MSHA), Environmental

Protection (EPA), Nuclear Regulatory (NRC) and to a lesser degree Occupational Safety and Health (OSHA). We shall illustrate how inspections are integral to these programs by reference to several of them.

Perhaps the oldest proactive system for detection of violations is that of the FDA. The 1906 Food and Drug Act did not provide for mandatory inspections, but the agency soon evolved a voluntary system of inspections whereby it made a request to inspect and the industry usually assented. Failing assent, legal process was possible. Not until 1953 were inspections clearly made mandatory by the Congress, with authority extending to prescription drugs in 1962 and to certain medical records in reports in 1976. Section 704 of the 1938 FDCA (21 U.S.C. 374) still is the primary statement of the inspection authority, however. It authorized FDA inspectors, upon written notice and offer of credentials, to enter and inspect any establishment in which food is manufactured, processed, packed or held (before or after interstate commerce) and to inspect any vehicle used to transport such food in interstate commerce. The only restraints upon this authority are that the inspection be "at reasonable times," "within reasonable limits" and "in a reasonable manner." These "reasonability" requirements do not foreclose the legality of a surprise search. [U.S. v. Thrift Mart, Inc. 429 F.2d 1006 (9th Cir. 1970) cert. denied 400 U.S. 926.] A prior judicial construction of "reasonable inspection," Durovic v. Palmer, 342 F.2d 637 (7th Cir.), cert. denied, 382 U.S. 826 (1965), concluded that the taking of samples during the inspection process was authorized by the Act. (Heaviside, 1979).

The FDA program since its inception has had no fully systematized schedule of inspection. A recent review by Heaviside (1979) describes the inspections program of FDA as follows:

- (1) Inspections are made by computer program selection of firms for inspection with priority for inspection allocated on the basis of various criteria for selection;
- (2) Inspection may be in response to a specific compliance program, beginning with the identification of a specific problem in the industry or sector and inspections are made to effect compliance;
- (3) Inspection is based on past record of violation with frequent violators being inspected more frequently;

- (4) Inspections may be in response to information forwarded by State Health organizations or upon consumer complaint.

Note that while most of the FDA inspection program seems proactive, it has a reactive component as well; just how much is reactive in operations is unclear.

Heaviside describes the procedure for determining a violation following inspection as follows:

"Once a site has been chosen and inspected, the investigator returns to the District Office and prepares an "Establishment Inspection Report" which contains detailed information concerning the inspected firms observations, and the firm's initial response. The report is then channeled through a multi-leveled system of review, the first step of which is review by the District Compliance Branch. At this stage a determination is made whether the observed conditions constitute a violation of the act and whether further action is warranted. If further action is advised, the compliance officer documents the violation and forwards the report to the District Compliance Director. After this stage the report is reviewed by the compliance office of the appropriate bureau, the regulatory management staff within the Office of the Associate Commissioner for Regulatory Affairs, the General Counsel's Office and the United States Attorney. At each level the legal and factual sufficiency of the case is scrutinized and potential regulatory actions may be screened out. The enforcement statistics in the FDA Annual Reports concerning regulatory actions (unfortunately) do not accurately detail the magnitude of FDA enforcement efforts or the incidence of reported violative behavior, since they only measure one end of a multi-level system. (Heaviside, 1979).

For many years one might have described the inspections program of the Mining Enforcement and Safety Administration in rather similar terms. While MESA had mandatory inspection powers, the agency's inspection schedule was determined entirely by administrative discretion. With the creation of MSHA in 1977, however, statutory requirements were set forth requiring that MSHA inspectors shall inspect each subsurface mine at least four times a year and each service mine at least twice a year. MSHA inspectors not only check site safety, per se, but look for other compliance requirements under the act, such as whether miners have had the required number of hours of retraining each year. These agency mandated proactive inspections become the principal strategy for detecting violations in the mining industry. MSHA, of course, also does inspections reactively, as when inspections are made following the

report of any mine accident or disaster or upon the receipt of complaint from a union or other source. But the bulk of violations are detected by regular proactive agency inspection programs.

A rather different program of proactive inspections, more appropriately designated continuing or periodic monitoring systems, characterizes some other regulatory programs. Such systems are usually found in fields in which there is continuing or high frequency violation of some standard or where violation is an infrequent event, but the cost of the violation is so high as to warrant its immediate detection and reporting. The EPA monitoring system is an example of the former while the NRC is an example of the latter type.

The EPA and NRC monitoring systems also are of special interest as examples of inspection systems for two reasons. First, they are of interest because the monitoring system can provide a continuous record of an environment, detecting violations as they occur. Second, monitoring is based upon the potential violator acting as his own agent of detection and reporting. We illustrate these elements for EPA and its water pollution control program. EPA water pollution control operates with a permit system. The system requires that a potential pollution source (municipal or non-municipal) apply for a permit within 90 days before dumping any pollutants. Each permittee is required to establish a monitor and submit weekly results of water pollution levels in a monthly report to EPA. The permittee is required to swear as to the accuracy of the report, and there are criminal penalties for false entry and false swearing. Actual inspections are made by EPA only when the monitor reports indicate there is a problem or a potential violation.

These monitoring systems depend upon an examination of reports from the monitors to detect violations. Quite commonly this is done by routine clerical or investigator inspection of the report. At the present time EPA is in the process of entering the information into an electronic data processing system. It anticipates that by mid-1980 substandard levels of pollution will be detected by computer program.

A very special form of the continuing proactive monitoring system to detect violations is the Passport Control of INS. There, a highly sophisticated computerized intelligence file that can relay information about any passport number is combined with investigation by personal interrogators and an actual inspection of persons and their property.

(4). External Audits. Though it is no simple matter in all instances to distinguish an audit from an inspection, particularly since the two may be merged in a service, the audit relies very heavily upon traditional modes of accounting and the examination of records for evidence of violation. An inspection, by contrast, relies more heavily upon the direct examination of violative behavior or upon inspecting conditions that produce violation.

To a growing degree, the audit is used as a proactive means of detecting violations. The traditional use of the audit was to certify compliance or conformity and to secure compliance where there was nonconformity or violation. There was a presumption that violation was due to error rather than intent. But increasingly, the audit becomes a deliberate or proactive means of detecting violations or noncompliance, signaling possible wrong-doing. We shall explore briefly a number of different ways that audits are used in this way.

First, HEW has specialized in developing a computerized detection program by matching eligibles, captioned "Project Match," where the object is to determine whether persons or organizations occur in the same or different eligibility systems in violation of the law. (HEW, 1979:96). Among the kinds of matches undertaken by HEW for income maintenance programs are these: (1) the match of Federal military and civilian roles against State AFDC roles; (2) the match of private employee wage data files against AFDC recipient roles; (3) the match of Supplemental Security Income against Federal employee roles. Where there are duplicates or some higher order of match, investigation is undertaken to determine whether there is actual violation.

Second, probability samples are drawn to conduct special audits which then determine the classes or categories against which more intensive investigative audits are to be undertaken. This is characteristic of the IRS where TCMP is used to develop a discriminant function (DIF) for the selection of returns for audit (Long, 1980). The U.S. Department of Agriculture similarly does sample audits of its loan programs (USDA, 1979:11) to verify whether they were made in appropriate amounts and to eligible receivers.

Third, audits are conducted with or as part of a field inspection system designed to detect violations. Over the years, the U.S. Customs Service has shifted from the inspection of goods at the "port of entry"--a strict inspection system to detect violation--to a system of audits designed to verify transactions and claims of importers, carriers, and exporters and with on site audits of their records, accounts, statements, and operating facilities. These audits are less costly than direct verification by

inspection. Customs also employs a system of selecting organizations for audit based upon a function designed to select high probability violators.

(5). Investigations. Most agencies still rely most heavily upon proactive and reactive modes of investigation, though reactive investigation perhaps dominates regulatory law enforcement. Typically an agency responds to an external complaint of violation by initiating an investigation. But, investigations can be initiated proactively as well. Shapiro (1980:290-355) shows for example, that the SEC enforcement strategy is based upon investigating cases originating both on complaint and on initiation by staff. A number of different proactive investigation techniques have been developed by agencies.

First, increasingly sophisticated programs are developed to select high risk violation groups for proactive investigation. The Antitrust Division of the U.S. Department of Justice has a caseload management system (ACES) that includes information on all antitrust matters initiated by the Division since 1963. It also includes information on other matters such as regulatory proceedings, resources and budget. This ACES data base is used in conjunction with other information to select industry groups for special investigation. In 1979, the Antitrust Division reported, for example, that it was systematically examining concentrated industries to determine the existence of prosecutable shared monopolies. By combining ACES data on past antitrust cases and investigations with data on industry size, number of plants, volume of sales and concentration ratios from commercial data bases, the universe of concentrated industries that warranted shared monopoly study was narrowed (Shenefield, 1979:4).

Second, surveillance systems are used to detect potential violations which then are investigated when they exceed a threshold of risk of inquiry. Perhaps the single most spectacular selection system for detecting potential violators by further investigation is the National Electronic Injury Surveillance System (NEISS) developed for and used by the Consumer Product Safety Commission.

Third, various agencies develop preventive surveys that are used to identify and correct conditions that are conducive to white-collar law-breaking. The emphasis falls upon using the information generated in detecting violations and violators to find conditions that cause them and then altering those conditions to reduce the incidence and prevalence of law-breaking. The Department of Labor, for example, has developed Fraud and Abuse Prevention Surveys (FAPS) as a "preventive form of investigation." FAPS are undertaken by three-person teams (made up of an

investigator, an auditor, and an analyst familiar with the program) who are assigned to a program or grantee (DOL, IG, 1979:52).

Most agencies do not have the authority to investigate and pursue criminal matters. That authority rests with the U.S. Attorney's and divisions of the U.S. Department of Justice. Mention has been made of the fact that some agencies, such as IRS, have a Criminal Investigation Division which both initiates matters and receives complaints that are investigated as criminal matters. The IRS ultimately refers these to either the Tax Division or to a U.S. Attorney for prosecution, but it has enormous power to determine whether a given criminal matter will be referred for filing. Long shows that about nine of every ten criminal tax case investigations in IRS originate with one of its three enforcement Divisions. Civil Audits and Criminal Investigations each account for about one-third of all case investigations initiated and Collections for about one-sixth (Long, 1980:Table 6.2).

We might conclude our discussion of these internal and external inspection, audit, and investigation strategies by describing briefly how they are organized in a particularly large service. The U.S. Postal Service perhaps contains the single largest reactive inspection system of any government agency apart from that of the military.

Through its Inspection Service activities, the Postal Service protects the mails, postal funds and property; investigates internal conditions and needs which may violate the postal laws; and inspects and audits financial and non financial operations. There is a Regional Chief Inspector in each of the five postal regions, reporting to a Chief Postal Inspector (equivalent in rank to an assistant postmaster general). Each of the twenty districts is supervised by an Inspector-in-charge. Thus the Inspection Service functions as an independent unit within the postal service. The responsibilities of the Inspection Service fall into three main areas, ones that correspond with those of federal inspection agencies within a department of government.

First, the Inspection Service assumes responsibility for enforcing the postal laws--some 85 statutes--through the investigation of alleged violations and the apprehension of persons committing offenses against, or by misuse of, the mails, as well as offense against postal property, employees, or operations. The Inspection Service reported in 1977 (Annual Report) that 66 percent of investigative time was spent on criminal investigations. Both the employee violations and those against the service are included in this reactive investigative law enforcement.

Second, the Service is responsible for an internal audit of all financial and other operations of the Postal Service. Financial audits ensure that postal revenues and funds are collected and accounted for and that post distributions are proper. These audits form the basis for an annual certification of Postal Service accounts, a statutory requirement. Service audits examine the economy and efficiency of postal operations. The Postal Service reported that 25 percent of all investigative time in 1977 (Annual Report) was devoted to this audit program.

Third, the Inspection Service is responsible for police security. A specially trained Security Police Force protects personnel, mail postal funds, and postal property and is responsible for physical and personnel security measures, such as for security protection equipment. The remaining 9 percent of investigative time in 1977 was spent on these security activities and certain administrative investigations related to the integrity of the service.

Although a substantial proportion of the resources of any law enforcement or regulatory agency has gone in the past to reactive strategies, increasingly they are geared to proactive detection strategies, particularly ones using electronic information systems. We would call attention to several other analytical models that are implicit in such strategies and their limitations.

First, both the Antitrust Division and IRS systems for computer-based selection of high risk offender groups rest upon on implicit models that predict offending. The Antitrust Division Model however, is based upon past experience case files rather than upon on a causal model of the behavior under investigation. The IRS model is based on an audit verification model. To the degree that past cases or verification procedures result in a select set of violators, one may lose a substantial set of actual violators by use of such selection strategies.

Second, inspection strategies are apparently based upon a compliance rather than a sanctioning-deterrence model of behavior while the opposite seems true of audit and investigation strategies. This has implications for the kinds of statistics generated by the different types of strategies and how they can be merged into common sets of indicators. In particular, compliance strategies will yield little by way of sanctioning information.

Third, on the whole the strategies are based on presumptions that the modal violator in the system is a first rather than a repeat offender. Because of this assumption, most information systems do not track persons but rather violations, whereas in organized crime strategic information systems persons are the main object of tracking.

There are some emerging exceptions, as is the case with matching detection strategies of HEW and the more sophisticated monitoring and inspection systems of the environment or of mines, but even in these cases the proprietary units are not always tracked.

Fourth, each of the official strategies of detection is unlikely to generate the same set of violations or violators as any other strategy--though some strategies may generate a larger set than others and some are more likely to overlap. Nor is it likely that any combination of official strategies will exhaust any hypothetical universe of cases. The less overlap among strategies in the cases detected, the greater the coverage. Still, it is commonly assumed that, for many different reasons, there will be limits to which any official detection and reporting system will be able to count and classify matters relating to white-collar crime. We turn next, therefore, to consider alternative ways to counting and classifying such matters.

Deterrence Models. Surprisingly little is known about how white-collar offending may be deterred by the imposition of sanctions or by other means of regulating conduct. The major interest in the deterrent properties of law has lain in examining the effect of criminal sanctions upon ordinary criminal behavior. The effect of criminal sanctions on white-collar offending has been neglected on the whole and almost no attention has been given to the deterrent properties of regulation.

Deterrent Properties of Sanctions. There are two major ways that sanctions may affect behavior. One generally is called general deterrence, the effect negative sanctions imposed on persons and organizations who violate the law have on inhibiting others from violating it. The second major form of deterrence is special deterrence, the effect that sanctions have on a sanctioned offender, i.e., the degree to which a sanctioned offender is kept from violating the law in the future. There is a third possible effect of sanctions, their effect on offenders who are not punished. Of these there are two special cases, those who are not punished because they are not detected or apprehended for violating the law and those who escape punishment for their participation, whether by acts of immunity, clemency, or leniency. Most of the interest in deterrence in white-collar violations of law pertains to specific rather than general deterrence.

Almost no regulatory or law enforcement agency responsible for white-collar compliance or violations of law has developed a strong interest in deterrence models. What examples we have derive from the development and testing of

models in research investigations. Later we shall have occasion to note how this has affected the development of official statistical information systems.

Perhaps the single major exception to the development of general deterrence models in white-collar law violations has been the interest that economists have in whether various kinds of regulatory actions over market behavior have their intended effect. Their primary interest has lain in that small class of offenses related to antitrust, particularly whether regulation and sanctioning deters cartels. Much of the interest in cartels has focused upon whether antitrust enforcement deters horizontal price-fixing. As Block and his collaborators (1978:51) note, the major attention has been given to the application of simple deterrence models to the decision to violate antitrust laws, but there has been no empirical test of the price-fixing decision. In general such work has tended to argue that sanctions have been set too low to produce effects, and as a consequence to argue that deterrent effects on anticompetitive agreements would emerge if there were higher fines for price-fixing. This is the familiar argument of adherents to the rational choice model of deterring behavior.

A major exception to the failure to test specifically for general effects of antitrust law enforcement on price-fixing is the work of Block, Nold, and Sidak (1978). We shall briefly review it to address some of the statistical information questions it raises. The investigators begin by developing a simple model of collusive pricing behavior which assumes that the price-fixing decision is a continuous choice of the optimal degree of collusive price markup rather than a discrete choice. In the model, the optimal markup is structured to depend upon enforcement effects and penalties (1978:11-13).

The test of such a model depends upon examining the effects of varying levels of antitrust enforcement on a set of national or regional industries with identical products, costs, and demand conditions. Unfortunately, no such set of data exists in any statistical information system and a test was chosen where the markups for a homogeneous commodity, white pan bread, were investigated under varying actual conditions of enforcement of price-fixing cases involving bread. A measure of the markups on bread was obtained for 20 major cities for 1965-76 and both global and regional indicators of antitrust enforcement in bread price-fixing cases was developed. The test provides evidence that markups in bread fell in the wake of a Department of Justice action for sanctioning in a price-fixing case. This effect appeared to be largely due to the existence of subsequent private civil litigation. That is, the Department's action

triggered class action suits as a private remedy. It appeared that class actions had an independent deterrent effect (Block, Nold, and Sidak, 1978:47).

The development and test of such a model makes apparent why it is that regulatory agencies normally do not investigate the general deterrent effects of regulation, even though the intent of most regulation is, precisely, general deterrence. The main reason is that the regulatory or sanctioning agencies fail to develop system-wide statistical information on the behavior that is being regulated. In the above instance, even though the Department of Justice's Antitrust Division brought more bread price-fixing actions than any other type of food price-fixing case during the sample period of the study, they did not systematically develop over-time information on pricing in bread or any other food industry so that they could assess levels of violation and, therefore, possible deterrent effects of their enforcement efforts.

Stated more generally, tests of the general deterrent effects of sanctions or regulatory actions require information on the behavior of persons or organizations in a defined and known universe. No test of the effect of sanctions on members of a population who have not previously violated is possible unless one has information on all members of that population, including their past and current behavior with respect to the conduct being regulated or sanctioned. At a minimum, we must have over-time rates of offending for all members of the population being regulated (or a probability sample of it). As the Department of Justice develops its ACES information system, it may acquire some information of this kind, but generally such information must be developed by other and independent sources of intelligence gathering. Often that is not the case for a behavior being sanctioned or regulated.

There is a great deal of writing suggesting that offenders of high socioeconomic status, particularly those who commit white-collar offenses, are more likely to be deterred by negative sanctions than are persons of low socioeconomic status. Yet, no law enforcement, adjudication, or regulatory agency models behavior to track the effects of sanctions systematically. Far more interest has focused upon whether there are disparities in sanctions, particularly sentences, given to persons of high as contrasted with low socioeconomic status, a matter of the equal protection of the laws.

Though there are exceptions for compliance oriented agencies, the main reasons why agencies responsible for administrative, civil, or criminal sanctions cannot investigate the specific deterrent effect of sanctions is that they do not systematically track sanctioned offenders

and monitor their rates of offending. Indeed, the files of most law enforcement and regulatory agencies are not organized in ways that make possible tracking over time persons or organizations who have been investigated or sanctioned by the agency. The SEC, for example, tracks neither individuals nor organizations over time, so that it cannot determine the specific effects of its sanctions. To be sure, it is no simple matter to track organizations, since the same group of individuals may create a "new" organization following the sanctioning of an "old" one, and individual groups of associated persons appear and reappear in different organizational guises. Yet difficulties in tracking either persons or organizations do not seem to account for the failure of regulatory or enforcement agencies to track unique persons or organizations. Rather, the answer seems to lie in what kinds of measures are chosen to evaluate the effectiveness of an agency. These usually turn out to be measures of volume of cases handled and kinds of sanctions given, rather than measures of the effect of actions or sanctions. There are some partial exceptions where agencies track persons or organizations based on the major goals or mission of an agency, a matter discussed with respect to goals of compliance or punishment.

Incapacitative Effects of Sanctions. The effect of sanctions on organizations is of special interest where the forms of punishment involve incapacitation. One commonly encounters statistical indicators of incapacitation using data on sentencing of white-collar offenders. But it is rare to encounter measures of incapacitation for organizations or of the general and special deterrent effects of incapacitating organizations.

There are a number of ways that organizations can be incapacitated. They can be denied their right to legitimate operation as is the case with sanctions that withdraw licensure or that orders discontinuation of operations. MSHA, for example, can order the closing of a mine until it comes into compliance and NRC can order the shut-down of nuclear generating facilities. FDA has considerable powers of licensure as does SEC. Other powers that have some effects of incapacitation are the use of injunctive relief and the withholding of federal funding. Given these rather considerable powers to incapacitate organizations, it is surprising that there is no information on their deterrent effects. How common is it for organizations that are incapacitated to take new corporate identities and repeat their pattern of offending? Are incapacitated units such as mines that are closed, reopened under "new" ownership so as to avoid some of the penalties? Are banned products reoffered under new guises with the same organizational sponsorship? There are few answers to such questions and

yet they would seem to lie at the core of assessing the deterrent effects of actions that incapacitate organizations.

Examination of the deterrent effects of incapacitation deserves special emphasis. It is all too commonly assumed that only people and not organizations can be incapacitated, but that clearly is not the case. Inasmuch as white-collar violations are often committed under law by organizations, it is particularly critical that we develop measures of organizational sanctions, particularly of incapacitation, and measure their general and specific deterrent effects. As a minimum, that will necessitate tracking organizations--both sanctioned and not sanctioned--over time.

Sanctioning Effects of Acts of Regulation. It is noteworthy that general and specific deterrence models usually focus on the effects of penalties on behavior. Yet acts of regulating may themselves have important general and specific deterrent effects. Among the more powerful that we have already mentioned are audits of records kept. Others pertain to the necessity to keep certain kinds of records and to report regularly, including in some cases a compulsion to report violations. The NRC, for example, requires extensive record keeping and voluntary reporting of violations of safety standards. SEC requires that each corporation file Form 10K annually, a form that records information on legal proceedings against the corporation. What is surprising, again, is how little we know about the deterrent effects of such activities as record-keeping, audits, and reporting, including statistical reporting. There is some evidence that the threat of sanctions, including audit, has an impact on reporting of taxable income (Schwartz and Orleans, 1967:257). Though there are endless complaints about the requirements of "paperwork" and voluntary reporting, little is known about potentially important deterrent effects of record keeping and audits. Moreover, although the IRS varies the probabilities or risk of audit, it has not developed any criteria for setting probabilities based on the effect of altering risk on tax evasion or noncompliance. There is the possibility that increased risk of audit or detection has the effect only of creating more sophisticated means of evasion. As Katz (1979) observes, white-collar offending is more likely than ordinary crime offending to involve elaborate forms of cloaking violations, including acts of altering or destroying records that permit the detection of violation or the tracking of violations to particular offenders. The introduction of requirements that increase the risk of detection and punishment may be counter-productive, a matter that is worthy of exploration.

But there may be other deterrent properties inhering in regulation that requires the keeping of records and of statistical reporting. An example of these potential properties is provided by a Congressional review of the reporting requirements of the Federal Election Commission:

"6. Establish Proper Campaign Accounting Systems: Andersen noted that political committees with adequate record keeping systems produced more accurate disclosure reports. Andersen recommended, therefore, that the Commission develop a simple bookkeeping system specifically tailored to the needs of small part-time campaign committees. Such a manual would supplement the existing FEC manuals for political committees and Presidential campaigns."

Statistical systems for collecting regulatory information serve the purposes of both the regulatory agency and that of the record keeper by producing changes in the record-keeping activities of the persons and organizations who keep them (Kaufman, 1960:101-107). The influence on changing behavior may derive from one or more forms of regulatory activity.

First, the coercive power of an agency may be used to require that certain records be kept in certain ways. This coercive power exists in the form of mandatory reporting and record keeping requirements. Mandatory requirements for both record-keeping and reporting are particularly common for licensed organizations. SEC, NRC, OSHA, EPA, and MSHA all have such mandatory requirements.

Second, an agency may provide specific advice on record-keeping procedures that will make it easier for a reporting agency to avoid violations. But compliance with the advice is voluntary. This procedure underlies much of the reporting requirements of the Federal Election Commission. Although requiring specific reports, the FEC relies primarily upon manuals and guides for keeping records to assist campaign committees in avoiding violations.

Third, voluntary and self-initiated adaptations of record-keeping by regulated persons or organizations make it possible for them to meet more safely and economically the regular requests or demands for information from an agency. Without a doubt much of the automation of business information on payrolls derives initially from the tax laws requiring businesses to collect and report taxes. These information systems in turn have enormous advantages for a business that derived solely from keeping records in accordance with the definitions and procedures developed to meet the tax agency's requests.

What the foregoing should make apparent is that whatever the reason a person or organization is led to keep records in a certain relatively standard way, when they do so, they become easier subjects of both regulatory control and informational data collection. Individuals who have experienced a tax audit often report, for example, that they subsequently voluntarily develop more elaborate information keeping systems so as to facilitate audit should they again be selected for one. At the same time, they observe that the information system provides them with considerably more useful information on income and expenditures than they had previously compiled or utilized. Similarly, the requirements for affirmative action reporting are said to give the Department of Health, Education and Welfare and the Department of Labor greater leeway to monitor affirmative action programs while at the same time providing each organization with information that permits it to take affirmative action in ways that hitherto were not apparent. Despite the face validity of such individual and organizational reporting, there is no systematic information on these reciprocal functions of requirements for statistical reporting.

Compliance vs. Law Enforcement-Justice Models. Law enforcement or justice models are dominated by the detection and investigation of violations with offenders being subject to penalties in the form of punishments or losses. Compliance models are dominated by regulatory activity designed to produce behavior that conforms to rules or standards. We shall explore some implications of these twin models for the production of statistical information on white-collar law violation.

Law Enforcement-Justice Models. Law enforcement or justice models are closely related to deterrence models since one of the presumed effects of penalties is to deter behavior. But a general deterrent effect can also be seen as a compliance effect, i.e., where negative sanctions on offenders prevent others from offending, they produce some form of compliance.

But negative sanctions can serve purposes other than to deter violation of law. Punishment can be regarded simply as a measure of redress for grievances or law violation. Punishment is then viewed as a "just desert"; an offender harm is balanced with a socially inflicted harm on the offender. It is in this sense that many law enforcement or justice agency indicators report penalties levied against violators. They are simple measures of society's punishing behavior, quite apart from any other effects that punishment may have. Law enforcement and justice systems thus produce penalty measures as indicators of their use of punishments.

Negative sanctions may serve yet other purposes, most notably that of restitution. Though some law enforcement or justice agencies provide for restitution, it also is commonly used by regulatory agencies to sanction violations. Law enforcement and regulatory agencies tend to confound restitution with penalty measures. Reports of monies received often fail to distinguish that which is in effect owed as a matter of obligation or as restitution from that which is assessed as penalty for violating. Both IRS and the U.S. Customs, for example, collect revenue. When revenue is owing, collections do not always reflect what is penalty revenue and what is obligatory or restitutive receipts. Moreover, under some special circumstances, penalties become sources of revenue. This is true for example when U.S. Customs confiscates goods and sells them or sells items held for collection of duty. These confusions in purpose make indicators of dollar values attached to penalties less than satisfactory as measures of penalty, restitution, or monies owed and collectable.

Law enforcement and justice systems are built around the detection of violations, their investigation, and their adjudication. The system is structured around the investigation of allegations of law violation. An investigation thus becomes the core of the law enforcement statistical information system. Although some information may be available on the source and means of detection, such information usually is not systematically collected and reported. Indeed since decisions in our law enforcement and justice systems are discretionary with officials, an official record often is lacking on the discretionary decisions, particularly at the point they are accessioned to any organizational level of the system. Immigration and Naturalization (INS) agents, for example, often make no record of actions taken "at the borders" of the U.S. Where such matters constitute "de minimus" violations, even though they may be reported to a U.S. Attorney, that office may retain little or no information on them. Often not even a record is made as to their number.

With the investigation as the core of a law enforcement model, statistical information attaches to the "case" investigated. Thus it is the "case" that is tracked as the basic unit in law enforcement models rather than individuals or organizations in some career or continuing sense. When an investigation is "closed" for any reason, it tends to leave the information system. Whether or not provision is made for cross-referencing to such "closed" cases at some later date may be a quite arbitrary matter in an agency's information system. Whatever establishes that link, however, whether the unique identification of persons or organizations or reference to past violations, the basic information unit in the statistical information and management system is case investigation.

Disjunctive Nature of Organized Law Enforcement-Justice Systems. Each level of the law enforcement and justice system similarly proceeds to "investigate" cases and make a determination, although the discretion to determine penalties falls to only some of the organizations. Nonetheless, it is characteristic of these information systems that they are discretely organized, each around its own set of cases, that only a minimum of information is exchanged when a case is an output transaction to another organization and that often no attempt is made to track a case beyond its point of transfer to another organization. When it is tracked, each organization records its own information about "the case."

There are five major consequences that flow from this disjunctiveness in the processing of information about the same case.

First, the organizations in a justice network tend to process information related to cases rather than about people or organizations that are the object of the inquiry and decisions. Generally speaking, therefore, little attention is given to information that might explain behavior. Rather, the bulk of the information pertains to how a particular decision was made under the law. Even matters of discretion ordinarily are not recorded in such information systems. One, therefore, is left with a great deal of information about formal properties of decisions and very little about their bases or content.

Second, the organizations are linked in a network rather than by systemic properties. As a consequence, one obtains statistical information on the "stocks" of cases in any one of the organizations at a point in time. Indeed, one cannot always obtain information on stocks in all organizations at the same point in time. Correlatively, since cases are not followed across organizations, it usually is impossible to obtain information on the flow of cases through such a system. A stock-flow model of cases, persons, organizations (or any other unit) through a law enforcement-justice network thus is impossible.

Third, because each agency does not share much information with any other in the system, there is a great deal of "missing information" on matters that are not immediately relevant to a decision and considerable disagreement as to the "facts" where the same information is presumably reported. This means both that the information for any given agency is of questionable and unknown accuracy and that across agency comparisons will produce different distributions and results for what is presumed to be a common caseload.

Fourth, the organizational disjunctiveness in processing cases which precludes information on the flow of cases across organizations makes it impossible to analyze law enforcement and adjudication by cohort models. The disjunctiveness in counts and the inaccuracies in information likewise make the stock data sufficiently arbitrary so that synthetic cohorts often cannot be constructed reliably.

Finally, the high amount of discretion permitted in the system, particularly in the matter of criminal referrals and their processing, makes it difficult to compare the nature of criminal conduct across different agencies. For that reason, the aggregation of information on white-collar crimes in criminal files such as those of the U.S. Attorney's or the Administrative Office of the U.S. Courts is problematic for making comparisons over time unless one takes into account the differing contributions that individual agencies make to the aggregate.

Not all agencies are geared to law enforcement and justice models. Punishment models dominate the criminal justice system and are the common way of dealing with administrative violations, particularly in the form of fine systems and forms of restitution.

Compliance Systems. A substantial number of federal agencies, however, are oriented almost exclusively toward a compliance model of behavior. Others exhibit a mixture of compliance and law-enforcement goals. We turn to a brief examination of organizations that are geared to the production of complaint behavior and how this affects their statistical information systems.

The goal of much regulation is to produce compliance with standards or rules, a characteristic of administrative law which depends upon rule-making. Agency enforcement of law, however, also may be oriented toward producing compliance. Much administration of the tax law seems designed more to produce compliance than to punish violations. Where an agency takes compliance as its goal, it ordinarily will be structured in ways to induce compliance.

First, the agency will be structured to make rules and set standards. It also will adopt operational criteria for the meeting of standards. Quite commonly the compliance measure may be a measure of risk with value judgements about what is acceptable risk (Lowrance, 1976).

Second, the agency will structure regulation so as to measure compliance at regular or periodic intervals. The intervals may be based on a continuous monitoring model, as is the case with EPA water pollution control. Inspection

periods may be mandatory by law, as for mine inspections. Tax laws also require periodic reporting of income and taxes by individuals, partnerships, and corporations and of earnings withheld and collected by employees. Compliance and violation reporting intervals may be specified by an agency. The latter characterizes NRC reporting where regular monthly compliance reporting is combined with a legal compulsion to report all "hazardous" violations immediately. It is also true of OSHA which requires keeping regular records open to inspection, with an obligation to report immediately all accidents that exceed a given threshold so that the report may be followed by an actual inspection.

Third, typically, the agency defines a universe of persons or organizations that are expected to comply with the rules or standards of the agency. They are either on notice that they are expected to comply or they must conform to some procedure of registration or licensing as an additional act of compliance. The universe may also be comprised of products, commodities or environments that must conform to certain standards. However, in these cases some organization, ranging from a governmental body (the licensing of a municipal water supply, for instance) to a private not-for-profit corporation (application for tax exemption, as an example), may be held responsible for compliance.

Fourth, the agency will develop an information system to determine the state of compliance under its measures of compliance.

Finally, the agency normally will have some administrative procedures or civil means available to it to induce compliance rather than to punish for violation. The goal of the regulatory organization will be to produce compliance, particularly where the commodity is a critical resource or a form of consumption in the society. Sanctions will be used only as a last resort. Normally time will be granted to correct or modify conditions to achieve compliance.

Statistics on Compliance. What then are the statistical information system components and consequences of conforming to a compliance model?

First, the compliance regulatory agency will have a set of standards and measures of compliance rather than a discrete measure of violation. These are likely to be continuous measures or interval measures so that one can determine levels of compliance. Noncompliance or violation will be some point on a scale, repeated measures of a given value, or some pattern of scale values. This often means that an agency can talk about levels of compliance, e.g.,

levels of water or atmospheric pollution, the risk of harm, as in the likelihood of side-effects, or a certified quality, as in the quality of food products such as meats or produce. A measure for determining compliance ordinarily is one that regulated parties can measure independent of any activity on the part of the regulating agency. Indeed, an agency may be held responsible for continuing monitoring or measuring and to report regularly to the regulatory agency. Noncompliance similarly need not be synonymous with a discrete state, and there can be levels of noncompliance.

Second, the agency normally will have a continuing record of the state of compliance at intervals of time. This means that the agency tracks the unit that is to be in compliance and produces individual over-time measures. Thus one can determine over-time rates of compliance (or correlatively, of violation or noncompliance).

Third, measures ordinarily will be kept on every unit expected to be in compliance (or at least a probability sample of them) so that detection of noncompliance or violation does not depend upon these matters being brought specifically to the attention of the regulatory agency (though the agency may delegate the record keeping to the regulated unit and hold it responsible only for reporting noncompliance; normally such records must be accessible as intelligence to the agency, however, and there are legal requirements for their retention and certification).

Fourth, the agency will develop measures relating to the induction of compliance, e.g., of the length of time required to achieve compliance. Such measures are quite different from those relating to the length of time between various stages prior to the imposition of sanctions and are not readily merged with such statistics. Indeed, the statistical accounting systems of compliance agencies may introduce new concepts such as "recalls" of products that were to be "brought into compliance" and the level of response indicating the product was brought into compliance. Thus a compliance measure may be related to a measure of a condition of violation that is to be brought into compliance.

Fifth, the agency may develop a framework to determine the rate of compliance in its domain of regulation. This is not always the case, but increasingly, as we noted in our discussion of audits, an agency that is compliance-oriented will attempt independent measures of compliance. The IRS, for example, uses one sample survey of TCMP to determine the prevalence of "nonfilers." In effect, it employs the information to certify that it is dealing with a very high level of compliance with the requirements of filing. It will similarly have information on the time of filing so that it will report how many individual income tax returns

are filed for intervals of time beginning with the first month of the reporting year. To be sure, there are points in that series where "late filings" are defined, but even those are differentiated in terms of whether or not permission was sought.

We have emphasized here that a statistical reporting system based on compliance models will produce rather different statistics from those based on law enforcement or penalty models. Each compliance oriented agency normally will produce some information on law violation as well as on compliant behavior. This latter information can be merged in some way with that for all basic law enforcement agencies. However, compliance agencies will produce information on white-collar law-abidingness as well as on white-collar violations of law. Measures of law-abidingness also may be built into research on white-collar crime. Clinard and Yaeger, for example, discovered that no violations were reported for about four in ten of their corporations, which they construe to be a measure of their compliance (1979:82). A "no violations" measure of compliance, however, is a function of the same institutionalized systems of detection and reporting as that reporting violations; hence it also reflects the performance of detection and reporting.

Prevention of Offending Models. Perhaps the least common of all models used in the social control of white-collar law violations are those built around preventing violations of law. Such models differ rather radically from the others previously described. Prevention models are closely tied to causal theories of the behavior that they and casual models use to predict law violation. The object of preventive social control is to intervene in a causal sequence to change behavior.

Prevention models are emerging in Inspector General programs where there is a responsibility "to prevent and control fraud, waste and abuse" in federal program funding and administration. These prevention models are usually rather crude. They are based on the premise that the causes of violation, when manipulated, will prevent the behavior from occurring. But it is not necessarily true that manipulating the causes of an event will be the optimal strategy for producing a change in the occurrence of that class of events.

This class of prevention models focuses on variables that are amenable to strategic intervention by the agency or its agents. The class of variables that best fits this description is opportunities for offending. Hence, prevention models tend to produce information on such opportunities.

Somewhat more sophisticated prevention models based on organizational exchanges or networks are being developed to assess the structural and transaction points in government benefit programs that are vulnerable to fraud and abuse. One such model has been developed by Lange and her coworkers (1979). When modeling the transactions that occur within government benefit programs, four categories of major offenders emerge: (1) the administrators who are charged with managing the programs; (2) the recipients who directly receive program benefits; (3) third party providers who provide the benefits or services; (4) auxiliary providers who offer goods and services to their parties and administrators.

Detailed examination of the transactions that give rise to offending leads to the identification of vulnerable transaction points in the exchange network in archetypical government benefit programs. These include especially (1) the application for benefits; (2) the administrative determination of eligibility; (3) the provision of services; and (4) the payment of government funds to third party and auxiliary providers. Specific offenses tend to be associated with transaction points, and their costs can be estimated. The application for benefits, for instance, produces recipient offenses of misrepresenting eligibility and changes in eligibility status. The provision of payments, for example, leads to offenses of misrepresenting costs by providers and over- and under-payments by government employees.

Currently it is difficult to estimate the losses incurred by fraud and abuse at each of these transaction points, largely because government information systems do not collect information by kinds of exchanges or transactions. However, each of the transaction components can be modeled and some information assembled that will permit the estimation of losses at each point.

There likewise are more limited models that attempt to predict the offending behavior of profit-making corporations. As noted previously, most of the research predicting corporate violations of law has been in the antitrust area. A review of these studies is found in Clinard and Yaeger (1979:151-53). What their review and their own attempt to predict corporate violations of law makes clear is that the choice of explanatory variables depends more upon the availability of indicators developed in some federal indicator system than upon the systematic collection of information the theory stipulates as essential to its testing. Because of an interest in market regulation, much prediction work is directed toward antitrust violations. Variables selected to predict violation include those related to the structure of particular markets, such as industry composition, size of

firm, sales, and information on corporate profit making. Yet as Clinard and Yaeger observe, these predictive variables are defined in rather broad and crude terms, making it difficult to test their predictive power at levels specified by the theory (1979:178-79). Often, then, the development of predictive models in white-collar offending will depend upon the form and availability of indicators developed in other indicator systems. No efforts apparently are made to affect the definition and collection of such indicators in ways that might enhance their predictive power in models predicting law violation. Thus their future development depends haphazardly on what is available from other sources of social indicators.

The utility of any social control model ordinarily is no better than the assumptions that underlie it. Each of the models that we have examined makes certain assumptions about endogenous and exogenous variables in the model and about the nature of causality in producing law violations or about the causal effect of interventions in behavior sequences. These assumptions must be examined as to their plausibility and validity and the implications of assumptions in each model specified clearly in terms of their potential effects.

Deterrence models of the effect of sanctions on crime rates, for example, are vulnerable to identification restrictions that take the form of a prior assumption about the behavior of a simultaneous relationship between crimes and sanctions. The National Research Council Panel on Research on Deterrent and Incapacitative Effects, for example, took great care to examine the deterrent effect of sanctions using both simultaneous and nonsimultaneous models (Blumstein, et. al., 1978:25-42).

Some of the more serious limitations of these models also lie in their assumptions about what are the possible kinds of behavior open to explanation and, therefore, of the kinds of violations that can occur in regulated or enforceable conduct. An interesting example is provided in the recent IRS report seeking to estimate government tax revenue losses (IRS, 1979). By using a concept of "taxable individual income"--an assumption perhaps that individuals account for greater revenue losses than do corporations or partnerships--corporate losses were ignored altogether.

The next limiting assumption was that tax revenues are lost only when persons fail to report all of their legally derived income or their income from illegal sources in money terms, i.e., actual dollars received for disbursement, investment, or savings. By this assumption, much of the subterranean economy where forms of barter and exchange generate "nontransferable income" by money exchange is ignored. No attempt was made to conceptualize, much less

measure, how much revenue is lost because transactions do not generate an exchange of dollars, but of goods and services in lieu of dollars or because individual firms such as families or even single person households generate "income" by their productive labor quite apart from jobs. These substitutes for money income, while for the most part not treated as taxable, are differentially distributed in the society.

A third set of assumptions derives from conceptions about where illegal income might be greatest in the society. These assumptions perhaps stem largely from conceptions of organized crime and income from illegal activities such as gambling, bookmaking, numbers, prostitution, and narcotics. In any case, what seemed particularly glaring is that no attention was given to revenue losses that were the responsibility of its sister agency--the U.S. Customs or to losses from yet another of IRS's revenue responsibilities, revenue lost on registration of gambling equipment.

These examples from the IRS study are intended only to point up the importance of model assumptions in estimating the extent of violation or of harm done by violations. Attention often focuses on the difficulties of actually measuring extent and losses for defined sources, ignoring the possibility that the model excludes other sources that could substantially affect conclusions reached. This kind of limitation is inherent in the design of studies that attempt to achieve an overall measure of "illegal behavior," such as in the Clinard and Yaeger (1979) study of "illegal corporate behavior." Though the authors are careful to call attention to the fact that they included actions against corporations only from 24 federal agencies, excluding all state and local violations, and that their sources varied in the extent of their coverage, little attention was given to how these limits affect all estimates and the prediction of violation. Clearly, a corporation's violation profile can change substantially with changes by inclusion or exclusion of forms of violation.

There similarly are important ways that the choice of social control strategies of law enforcement, prosecution, and regulation affect statistical information on white-collar law violation. It is somewhat surprising how particular law-enforcement strategies can come to dominate the classification of crimes. An excellent example is provided in the crime of "mail fraud," an offense that unfortunately is treated as a homogeneous class of white-collar crime. Setting aside the fact that much mail fraud represents a form of petty theft from the mails and focusing on those instances where it appears to constitute a white-collar violation, what is apparent is that mail fraud is used primarily as a "substitute charge" for the case violation. Mail fraud often is charged because it is easy

to assemble evidence of it and, therefore, there is a greater likelihood of conviction on the charge. Many frauds involving securities, for example, will be prosecuted as mail or telephone fraud rather than as violations of securities laws per se. Similarly, prosecutions against persons in organized crime may take the form of income tax evasion by showing that illegal income was not reported for tax purposes. A "white-collar" rather than an "organized crime" thus is "created."

We shall conclude our discussion of social control models of law violation by noting that major theories about ecological and social organization deserve exploration in forecasting changes in patterns of white-collar offending. Changes in interdependence and opportunities, for instance, generate different patterns of offending as well as of other kinds of behavior. A recent example is instructive. The emergence of cartel pricing of oil and its products (and perhaps of contrived shortages in marketing as well) has produced a host of violations by corporations relative to pricing and collusive agreement. Apart from the immediate consequence of shortages on over-pricing, shortages also give rise to new forms of fraud. Swindlers, for example, capitalize on the shortage by selling worthless devices for saving fuel, and retailers take advantage of their customers by pumping air with gasoline to deliver less to each consumer. These are predictable consequences as are those we discussed earlier for government benefit programs. More general models can forecast changes in kinds and amounts of offending.

Mathematical, Statistical, and Data Collection Models

Apart from the substantive models that guide and control the development of statistical information systems on white-collar law-breaking, mathematical, statistical and data collection models come to dominate the collection and collation of information on white-collar delicts. We shall give them only cursory attention here since we have already made some reference to them and shall discuss their implications from time to time in later chapters.

We shall begin by stating the obvious: the technology of electronic data processing has had a profound impact upon the development of information systems. There are so many ways in which EDP and ADP software and hardware have affected statistical collection and record keeping that even a simple catalogue would be a considerable undertaking. Here we simply note that these systems may have had unintended as well as many intended consequences on the production of social indicators, including those on white-collar law-breaking.

The advent of electronic data processing has enormously facilitated access to information and increased its public use. This increased access may mean that more and more such systems will be constrained by their use by the public as well as by management.

A second consequence is that data tapes come to substitute for files rich in their diversity and complexity. As tapes increasingly substitute for such files by categorizing and massaging information, they solidify it in ways that reduce its utility for multiple purposes. Moreover, the existence of data tapes permits the destruction of original data sources. The history of the future may be written with data tapes rather than original source materials. Hence, our information will represent an even more standardized and bureaucratized view of public transactions than is now the case.

And finally, the creation of electronic data systems has raised the spectre of social control by information processing. By making matching and merging of diverse sources of information possible they have created on the one hand a tool for detection of white-collar violations and their management in control systems. On the other hand, new data systems have made possible greater understanding of the causes and consequences of violating. The strains and tensions these capabilities produce in the social control of the information are not inconsiderable, and will continue to have consequences for who can know what about white-collar delicts. If one wishes to study corporate violations, whether of profit or not-for-profit making organizations, how inviolate shall organizational integrity be in such information systems? What can be accessible as uniquely identifiable information and in what form? These and related issues will press for resolution; decisions about them will have consequences for what can become available for social indicators of white-collar law violation.

Apart from the effects of technology on information systems, certain statistical data models are increasingly used to collect and analyze information. These include the rapid adoption of the sample survey as a means of data collection and econometric models for analyzing data, particularly by regression techniques. Here we call attention to the fact that such models are not without their assumptions and limits in regard to knowing what should become matters for investigation. In general, the impression is that such models, despite their limitations (or in some cases because of them), lend considerable power to the analyses of white-collar offending. They are particularly important for operational as well as for informational purposes. Yet their application raises questions about who gets regulated how. Stratified probability sampling models not only are powerful in

determining risks, but also in selecting units for observation as to their violation status. In themselves, risks do not specify either harms (safety, for example) or the cost of being selected as against the cost of being omitted from a given selection. These issues of value underlie the use of such models and deserve explicit recognition and attention.

Despite these caveats, what is apparent is that by comparison with statistical indicator systems for ordinary crime or for population and economic forecasting, far less is known about the sources and structure of error under given statistical models and assumptions. Clearly there is considerable variation among agency information systems in the extent to which error is modeled for data collection processes. But, on the whole, most information systems on white-collar law violations do not make provision for the assessment of the accuracy and validity of information.

Barriers to the Uniform Collection of Information on White-Collar Law Violation

There is no need to document the fact that there are no uniform procedures guiding the collection of information on white-collar law violations. Indeed, there is little reason to expect uniformity, given differences in the history and mandates of the many enforcement and regulatory agencies and the absence of a central statistical agency to structure uniformity. Yet it is precisely these differences in standards and procedures for the collection of information that pose the greatest barriers to merging and collating information from diverse sources on white-collar delicts.

Our review of barriers to the collection of information on white-collar law violations, such as the separation of powers, sovereignty of jurisdiction, and the decentralization of data collection illustrated how these structural barriers affect uniformity. We turn now to examine how another class of barriers that inhere in the institutionalization of data collection--those arising from the relationship of organizations to their environments--affect uniformity.

Earlier we noted that organizations have two environments, one their internal operating organizational environment and a second that external to it. That external environment we noted may be regarded from several viewpoints: as a source of intelligence to mobilize the resources of the organization, as an environment that may be penetrated to detect violations and as a source evaluating the organization's mandate and how it carries it out. To these we might add that the external environment also is made up of competing and supporting groups relating to an organization's mandate. Competition and accommodation also

affect how an agency collects and processes information. Each of these types of relationships with an outside environment presents problems for data collection. Our major focus will fall upon how relationships between internal and external environments affect the uniformity of data collection.

A principal source of variability in collecting information lies in the discretion of officials to determine the threshold of what it is about information that opens it to treatment as a potential violation of law. The exercise of this discretion is particularly apparent in what an agency accessions by reactive mobilization from its external environment as well as what it will accession by proactive means. The matter is especially complex at two levels, first in what is to be treated as a matter of law violation that any given agency is responsible for by way of regulation or enforcement. The second lies in what is to be considered a criminal matter.

What an agency treats as worthy of record keeping among the matters that come to its attention not only lacks uniformity among agencies, but there is variability within an agency or organization as well owing to the discretionary power exercised by its officials. Each U.S. Attorney, for example, has enormous power to determine what will be treated as a criminal matter and each agency, as each agent or law enforcement officer, will exercise enormous discretion in what matters are to be regarded as worthy of investigation.

Where uniformity and lack thereof becomes particularly obvious is in whether or how an agency collects and reports information on the sources of its reactive and proactive mobilization to investigations. Many agencies do not systematically record information on the source of their investigations, often using only general categories such as "on complaint," "informer," or "business" and virtually none reports information on these sources so that one might systematically compare collection sources and the kinds of intelligence they provide.

A recent study by Shapiro (1980) provides some sense of the difficulty in even developing a classification of sources of investigation for an agency. Shapiro (1980:82-84) notes that there is no way of determining how many matters come to the attention of the SEC that it decides not to treat as cases for investigation, since it keeps no record of them. Without records, such matters, of course, cannot be traced to their source. For those matters where records contain information on a source of mobilization, Shapiro classifies them into two major proactive and four major reactive categories (1980:300), 15 intermediate categories (1980:Table 5.2) and 60 detailed

categories of source of referral for investigation (1980:Table 5.1). What is quite clear is that even the general categories Shapiro employs, such as "securities community," "insiders," and "incursions into the securities world", are not readily transferable across agencies. Given differences in discretion to accession matters and to record their source, it is unclear whether a uniform classification system could be developed. This is so because each organization tends to record its information on source of referral--when it does so at all--by categories that seem germane to its mode of investigation or case processing. The source, not uncommonly, is a possible resource for additional information or with which further contact may be necessary at some future point.

What is clear is that the critical decision in accessioning matters for any agency is what is to be made a matter of record. And, what is equally clear is that there are no uniform rules or procedures with respect to treating matters as matters of record. The INS, for example, has quite different criteria for making a matter one of record than does the SEC. In general, it may be said that what will be treated as a matter of record within an agency will depend upon criteria and decisions about what matters have a future course within the organization in the sense that some resources will be devoted to them, even if only superficially, rather than their being referred elsewhere.

Given this enormous diversity in criteria and processes in what is to be treated as information to be collected, it should be clear that we are limited in the kind and amount of information that can be acquired on what comes to an agency's attention that it fails to treat as problematic and on what are the agency's sources of information.

The more formalized the relationship among organizations, however, the more likely one is to have a record of the origin and destination of matters. Most agencies keep information on their agency sources of referral of matters. This is particularly true for the referral of criminal matters to the U.S. Attorney's where one can obtain minimal information on the agency originating a matter for criminal investigation or indictment.

Yet it is no simple task to determine how an agency decides to refer cases for criminal prosecution. Not only are determinations of what constitutes a criminal case discretionary with each agency but agencies vary considerably in the degree to which they make formal provision for considering what matters are to be treated as criminal. Indeed, it is widely assumed that where an agency has formal powers to investigate criminal matters, as do IRS and SEC, its referrals are more likely to be prosecuted by U.S. Attorneys (Edelhertz, 1970:40). Though that may be

true for the few instances where such powers reside with agencies, it is by no means clear how such decisions are made within agencies and what, therefore, will account for the sources of cases for criminal prosecution and judicial determination. Since agencies often fail to collect and record information on decisions for referral or to decline referral, little can be learned about this process. How an agency collects its external intelligence also will affect the kind of information it develops on internal intelligence. This will depend very much upon how an organization gathers internal relative to external intelligence. In the extreme case, if the employees of the organization are "under-cover" agents whose employ is not known, the agency will have closed off, for the most part, its external sources of intelligence on employee violations. This undoubtedly is the case with undercover agents in the major intelligence and law-enforcement services. That such delicts occur is apparent on those occasions where cloaked identities become public and charges of misconduct are made.

The development of proactive intelligence gathering systems within organizations, most recently as offices of an Inspector General, illustrates how much variability there is in collecting information on violations in the administration of government benefit programs. The Inspector General's office in HEW has developed computerized intelligence programs based on matching information files from its own and other agencies to detect fraud and abuse in benefit programs. These comparisons, however, detect violations by employees as well as those who provide and receive benefits. But not all government departments that administer government benefit programs have as yet developed an equal capability for detecting violations in this way. The Department of Labor has begun some detection based on its information systems but the Department of the Interior has yet to implement a proactive computerized detection capability for its government benefit programs.

Even where ADP capabilities are developed, however, there are no uniform guides or practices regarding what is to be treated as law violation. The passage and current implementation of the Inspector General Act of 1978 (Public Law 95-142) illustrates how difficult it is to implement a legislative mandate with respect to the violation of law. The Act requires special attention to "fraud and abuse" without providing any clear definition of "abuse" or of how to distinguish "fraud" from "abuse." Moreover, as Inspector General reports make clear, it is not simple to make these distinctions with the existing structure of data collection, decision making, and the processing of information with software and hardware. Some reports refer to "waste, fraud, and abuse" (DOL, 1979:7), others to "fraud, abuse, and error" (HEW, 1979:11), and yet others to only "fraud and abuse" (DOA, 1979:i) or to "fraud, waste, and mismanagement"

(HUD, 1979:iv). Few attempts are made to separate clearly "fraud" from "abuse" except when matters are referred as "criminal matters." Only an occasional attempt is made to separate "error" from "fraud" and "abuse."

Yet these definitions are critical matters for what is collected and counted as law violation. Lange and Bowers found it quite difficult to separate fraud from abuse in their examination of the problem in government benefit programs (1979:14-16). Their decision was to treat "fraud" in terms of "legal definitions" and "abuse" as "the improper utilization of a benefit or benefit system" (1979:15). They go on to note that "... in practice, 'abuse' rests on an official determination of impropriety. When such impropriety is defined by law and criminal intent can be shown, abuse is "fraud." (1979:15). Yet, it is far from clear how one determines what operationally is "improper" behavior or practice except in terms of some official procedural determination of "impropriety." What Lange and Bowers do not tackle is the equally perplexing question of how one separates "error" from "fraud" and "abuse." Error quite commonly is associated with "inadvertency" or "mistake" though it may arise from procedures of accounting or of record keeping. Error then inheres in the method of producing information, though it commonly is treated as one of the residuals of "intent." Many enforcement or regulatory agencies conclude that where it is difficult to prove "intent," the residual may be treated as "error" and/or to "other sources," such as "waste," "ignorance," "mismangement" or whatever. The IRS, for instance, treats most tax matters without resort to attempts to prove criminal intent, recognizing that proving "intent" is costly, time-consuming, and often elusive. Some of the residual is treated as "errors in arithmetic," a matter that is determined by computer programs, but it is recognized that such mistakes in arithmetic may be intended as well as unintended.

Katz (1979) emphasizes that the decision about what is a criminal matter is often structurally indeterminate, because:

"In the purest 'white-collar' crimes, white-collar social class position is used (1) to diffuse criminal intent in ordinary occupational routines so that it escapes a unambiguous expression in any specific, situated behavior; (2) to accomplish the crime without incidents or effects that can be taken officially as presumptive evidence that a crime has occurred before the criminal has been identified; and (3) to cover up the culpable knowledge of participants through concerted action which creates for each a position of strategic ignorance. (1979:9-10).

Katz goes on to note that one can state the matter alternatively so that one avoids presumptions of guilt or intent:

"In order to convict someone of a 'pure' white-collar crime, prosecutors must make a case that a crime has been covered up in three ways. It was so thoroughly embedded in legitimate business (or philanthropic, or political) practices that outsiders can only perceive criminal intent by grasping the overall scheme. It was designed so that its means and consequences would not become telltale artifacts indicating that a crime had occurred. And it was strategically shaped around boundaries between occupational roles so that culpable insiders might protect themselves by maintaining silence or professing ignorance should an investigation begin." (1979: 10).

Whether or not one accepts the idea that white-collar offending involves the deliberate confusion of matters of proving intent to violate the law, it is clear that the separation of violations of law from error and structural sources of mistakes or of malpractice is no simple matter either.

The foregoing discussion should make clear that the institutionalization of discretion in official decision making when coupled with institutionalized ambiguities in the definition and accessioning of matters as violations of law leads to considerable variation in the way agencies collect information about the kind and amount of law violation and of which matters are to be referred for criminal investigation.

Not to belabor the obvious, it is clear that what an agency does not collect cannot be collated for reporting as violation of law. Moreover, where an agency fails to link collection to the statistical reporting of violations, there are both logistical problems for collation and problems of conceptualization and classification that cannot be resolved satisfactorily with the information that is collected. Finally, what is idiosyncratic to an agency is of little value ordinarily in more general systems of reporting information.

Institutionalized Omissions in Data Collection. Our review of what is and is not ordinarily collected on white-collar delicts indicates that certain kinds of information are ordinarily not collected or are collected in such a way that their collation is problematic. We ordinarily cannot rely upon agency information collection systems to provide the following kinds of information.

Firstly, information ordinarily will be unavailable on how an agency detects violations of law, whether by proactive or reactive means or by the characteristics of mobilization.

Secondly, an agency ordinarily will not collect information that permits one to determine the basis for discretion in deciding what matters are to be accessioned as violations of law or of how to determine which are to be treated as law violations once they are accessioned. This is owing to the fact that little information is collected on discretionary decision making. Not only does the agency provide no basis for determining what is not accessioned, but records are rarely kept even on how many matters are rejected or how many fall into categories other than violations of law.

Thirdly, ordinarily there is little agency information that permits one to test theories of general deterrence and for many agencies the information on special deterrence is lacking as well. The latter lack may be more a function of file construction than of actual collection procedures, but the information is practically inaccessible.

Fourthly, agencies ordinarily do not systematically collect information that explains the behavior of its agents in making decisions or of the behavior that is being investigated or regulated. As previously noted, this makes difficult the test of theories about what causes agency behavior or what causes law violation unless the information can be pieced together from other sources. Typically problems of matching such externally collected information with information in an agency's files is impossible, given agency restrictions on knowledge about individual cases.

Finally, as noted previously, little information is collected on what happens to matters when they lie beyond the legal control of a particular agency. At most one has agency career indicators with current procedures for collecting and sharing information among agencies. While the problem of collating information within or across agencies about the same unit or case is considerable, it is virtually beyond the capability of government information systems to cope with tracking unique units among agencies. There is nothing for white-collar crime reporting analagous to the FBI's career criminals file. From government sources, one cannot systematically draw together information on corporate units, as Clinard and Yaeger (1979) discovered, or on individuals, not-for-profit, or any other kind of organizational offender.

The collation of information from official agency collection and collation procedures to obtain statistical indicators of white-collar law violation depends then upon

how each agency organizes its collection, investigation, and reporting of information. The barriers are not easily overcome where the objective is to merge or collate information for a number of agencies or to compare different agencies on a set of indicators. Our attention shifts now to problems of collation and merging information.

Barriers to the Collation of Information on White-Collar Law-Breaking

Our main interest has lain in the development of over-time indicators of white-collar law-breaking. Such indicators serve many different purposes, including those of engineering, enlightenment, and intelligence and to test theories about violative behavior and its social control. To derive these indicators it becomes necessary to collate information because information about the same type of offense or victim derives from different law enforcement and regulatory agencies. Just how substantial those agency contributions to a given indicator can be is seen from an examination of the number of different government benefit programs that provide information on fraud to the Department of Justice's fraud file or on the number of different government agencies that provide information on criminal matters to U.S. Attorney's who in turn file on them in the U.S. Courts. Whether or not one accepts standard legal classifications of offenses, the problem of collating information from diverse sources is considerable. Indeed, it is much greater where legal classifications are not used as the main basis for classifying matters as white-collar law violations, since considerable reclassification becomes necessary.

There are a number of different kinds and sources of barriers to the collation of information on white-collar law-breaking. Some of these, such as the form of information systems, are structural barriers. Others derive from procedures for classifying and processing information and relate mainly to the lack of standardization of information or to imprecision in measurement. Finally, some derive from the fact that the information system for any agency may have unique or historical sources of variability that make merging their information with that from other sources problematic. Indeed, as we shall see later, each data series has its own unique historical sources of variability that affect its collation with other series. We turn next to consider these types of barriers to collation of information from diverse sources on white-collar law-breaking.

Structure and Process in Information Systems

We have previously noted that information systems are typically organized around a basic data collection structure that begins with the case file or case report. Some of this information is then accessioned and processed in an electronic data processing system--a formal computerized file. Finally the information in the computerized file is collated and reported as statistical summaries for management, public accounting, or analytical purposes. Each of these elements in structure and process within information systems is considered briefly below.

Basic File and Reporting Structure. Although agents develop information on a case basis, the basic information file may take rather different forms. There are three different ways that information may be structured for statistical reporting of white-collar law violations and related matters. They may be structured for aggregate reporting of information as of a point in time, for the aggregation of information about cases at a point in time, or for the aggregation of information about cases over time. Clearly as one moves from the collection and reporting of information on an aggregated case basis to one of reporting information more or less continuously over time, the kinds of statistical reporting that are possible are enhanced. Moreover, if one wishes to merge information across all agencies, the possibilities for merger are limited by the nature of the file structure.

A number of the regulatory and enforcement agencies base their statistical reporting system on aggregate statistical reporting units. The statistical reports that are aggregated may be individual investigator summaries or summaries for organizational operating units or for organizations themselves. We may illustrate this form of reporting by using the U.S. Postal Service as an example. At the close of each month, each Postal Inspector reports in a summary form the current case load, the number of cases closed during that month, the number of arrests, convictions, or discontinued actions for all their cases during that month, and a specific accounting of time spent. These agent summaries of activities are entered into a central information system via terminals located in each of the eighteen field offices. The central file aggregates information from the field offices for statistical reporting.

There are rather substantial limitations on merging information from files where the basic unit is an aggregation of information (or a summary). First, it is impossible to assess the accuracy of reported information, except by resort to field audits of each inspector's reporting. More importantly, additional information that is

not included in the aggregate reporting becomes inaccessible to the central information system. One cannot relate one variable to any other unless it is provided for in the statistical reporting form. Possibilities for inquiry using the information in the files thus is limited to the original aggregate form of reporting. Finally, and most important from the standpoint of collating information across agencies, if the object is to merge information for all units, the form of aggregate reporting sets the limit on what can be merged. One cannot merge information for any greater level of detail or for any relationship that is not provided for in the aggregate reporting form. Moreover, since such aggregate forms are rarely standardized across agencies, aggregate reporting by agencies virtually precludes merging much, if any, information across agencies. Indeed, the problems of collating information across agencies are quite similar when one attempts to merge information from published reports of statistical agencies where one has different forms of aggregate reporting for virtually every agency. This is the case for Inspector General reporting to the Congress.

Types of Statistical Information Systems. The most common form of statistical information system is that based on the aggregation of information on cases as of a point in time. There are two variants of this system. In one type of system information is entered only once for a case and it is not followed over time. In the second type, the case is "updated" over time by altering the case file; the previous status of the case thus cannot be retrieved as an item of information and one has essentially the status of cases as of a point in time. To be sure, it is possible for such files to include some over-time information as a condition or state, but the basic structure of the file is to secure information on "stocks" or "states" as of a point in time.

This latter form is more or less the basic structure of the case file for the U.S. Attorney's data base maintained by the U.S. Department of Justice. Whenever the status of a case in the file changes, it is "updated" and the previous information is eliminated from the system. When it is "closed," it drops from the information system. While one can do a certain amount of case flow with such data systems by taking successive "snapshots" of an original group of cases, one unfortunately cannot always match the snapshots for the same cases. One has, in effect, only the residual of total cases since not even their status remains the same from one point in time to the next. Such case files are more typical of law enforcement agencies that "open" and "close" cases and see their task as managing cases as of any given point in time.

Clearly one can do far more with such case based files, however, than with aggregate based files. The capacity to merge and collate information across files at a point in time is limited only by the common set of variables, the degree to which classes cannot be matched and by their detail.

It is becoming more common for agencies to develop a second kind of information system where files contain repeated observations on the same units over a considerable period of time. This form of case file is perhaps more typical of the regulatory agency that must keep track of the same units that are to be regulated over time. It is characteristic of information processing in agencies that regulate license units or seek their compliance. Where a regulatory agency, such as the SEC, has dual objectives of investigating cases and monitoring the behavior of a continuing universe, it may have two types of files. Thus the SEC retains a file of organizations with their Form 10-K information and a file of cases that begin with an investigation and are updated until the case is closed.

We may illustrate the continuous updating files for the information system developed for EPA water pollution regulation. EPA maintains a Permit Compliance Information System that includes all major permits and pollution violators and significant minor permits as well. The primary units of information storage are facilities with a permit number. There is a weekly updating of information in the system and all prior entered observations are retained intact. Currently the information system includes all entries for the past five years.

A major reason why EPA retains all information in its file is that the agency seeks to maintain continuing information on compliance so as to determine what courses of action are to be taken when a violation is reported at a point in time. Violations are always assessed in terms of a pattern. Moreover, the compliance process itself requires tracking, since following detection of a violation a permittee may be required to follow some schedule of compliance. Files for NRC and OSHA have a rather similar structure. The basic unit in MSHA's files is a mining facility that is subject to repeated inspections, and all inspections are retained in the file.

There is a third type of information system that does not exist in any developed form for white-collar violators--a centralized career violator file. Such files are retained in a limited way within some agencies, e.g., EPA, NRC, and CPSC; IRS uses a unique identifying tax reporting number for each individual, partnership and corporate taxpayer and thus can collate information about a case across its internal divisions (e.g., Collections and Criminal Divisions) and

from outside sources by reports of income earned or withheld. But, it is surprising how many do not track violators by important characteristics of their offender identity. MSHA, for example, keeps a file of all mines and a record of their safety inspections but it does not keep a file of violations by mine ownership status. The SEC does not attempt to track all organizations and individuals who have had at least one contact with the agency, though it increasingly seeks to collate information from past investigations.

Previously we have called attention to the fact that career files are more problematic for organizations than for individuals. Indeed, the FBI criminal career file contains some information on white-collar violators whose pattern of violation has brought felony arrests. But the changing patterns of organizational status--whether for profit-making or for not-for-profit organizations--renders an organizational career file problematic.

The absence of a career file that would permit compiling information by rates of offending for individuals and organizations is a serious one, as previously noted, since it means we will lack information on offending careers that are essential for determining the effect of sanctions on rates of offending. Parenthetically, we would note that such information also is essential for examining displacement effects of regulatory or enforcement policies. An individual or an organization may displace its offending from one type of law violation to another if sanctioned for the first type. Unless agencies pool information by unique identity of offenders, such displacement effects cannot be investigated.

Exchange of Information Among Agencies. What is surprising from the standpoint of collating information on white-collar violations is how little agencies either draw upon the information systems of other agencies or share information from their system with another agency. The major examples of shared information come from the relatively few instances where agencies have a common arena of enforcement and work out arrangements to share information or to avoid overlap in enforcing the law. Thus, the FTC and the Antitrust Division of the U.S. Department of Justice have agreements with respect to their concurrent jurisdiction over price-fixing cases. For the most part their agreement divides responsibility so as to avoid duplication of effort.

A somewhat different arrangement has recently been worked out between MSHA and NRC regarding their concurrent jurisdiction over occupational protection in milling of "source materials" or minerals used to produce atomic energy. Both agencies have jurisdiction to protect workers

in these industries from safety and health hazards. While each agency will continue to fulfill its specific responsibilities under its respect legislative authority to do so, they agree to "... issue and enforce compatible safety and health standards and regulations; use compatible inspections techniques where feasible; exchange information on health and safety protection in mills subject to mutual jurisdiction, as well as information pertinent to each agency's mission; and, exchange information on enforcement actions subject to jurisdiction of both agencies." (DOL NEWS, 1980:1-2). Moreover, the agencies agreed to work together to create new safety and health standards and regulations and to modify existing ones as well as to hold joint hearings and meetings. To eliminate regulatory duplication resulting from the 1977 Mine Act, the agencies will perform a twelve-month trial joint inspection program to determine the extent to which agency cooperation is possible.

MSHA-NRC relations attest to the fact that the exchange of information among federal agencies is a sensitive matter. While "... MSHA and NRC will exchange information on safety and health hazards and cooperate in the development and evaluation of medical information pertaining to health hazards from source materials," they have stipulated that: "Each agency will protect the confidentiality of and 'proprietary' information supplied to the other." (DOL NEWS, 1980:1-2). Although such agreements may solve some of the problem of duplication of reporting of the same violations or events, they do not address the problem where jurisdiction is more ambiguous.

Compacts, moreover, remain the exception and ordinarily they involve no direct access to one another's information system. Indeed, while the U.S. Attorney's file has considerable information on the disposition of cases in the U.S. Courts, and the Administrative Office of the U.S. Courts has important information on the filing and prosecution of cases in its file, the information each has about the other's domain is created for each one by its own personnel. This is possible to the degree that their joint participation provides both with the same information. This form of duplicating information, however, means that there is no measure of the degree of agreement between the two systems for any class or item of information. Indeed, while it is commonly assumed that the information each has for its own domain is more accurate than that which it obtains by access to the other's domain, there is no direct evidence on the matter.

We do not have an exhaustive inventory of agency information systems and their sources of information so that we can affirm unequivocally that most agencies depend solely upon their own personnel for the information in their system

and that they do not share information with parallel or linked agencies in their network. Among the agencies we examined, however, only a few instances of sharing were found.

The CPSC's electronic information system files are not linked to those of any other agency so that information can flow to the NEISS files from other sources. CPSC shares some information with a few agencies, however. Information on injuries involving moving motor vehicles goes from NEISS to the Department of Transportation while information involving harms caused by pesticides goes to EPA. CPSC transmits this information to EPA because CPSC only regulates the packaging of pesticides while EPA regulates the use of pesticides and the consequences of such use. Where injuries or harms result from the use of cosmetics or medical devices, CPSC shares that information with FDA. The transfer of information from CPSC to DOT, EPA, and FDA is by hard copy rather than in the language of its information system. There is no assurance, therefore, that the information it transmits will be classified and reported in the same way by any two systems.

We encountered one instance of sharing information in a computer information network. The Bureau of Mines and the Office of Surface Mining have access to MSHA's computer files because all of these agencies use a common identification number for their information systems based on the actual physical location of the mine (rather than its ownership). These agencies, however, do not add any information to MSHA's file from their files and MSHA does not accession their files. Parenthetically, we would note that the use of a common identification number based on the actual physical location of a mine facilitates the sharing of information across agencies better than would information on mine ownership. But there would seem to be little reason why a parallel file could not be developed on mine ownership that was linked to the unique identity of individual mines.

Before leaving the matter of structural barriers to the collation of information across systems, we would note that the tendency for each agency to choose its own hardware and to develop its own software or to rent commercial software packages makes for a patch-work of data file structure in a technical sense. Even when one can gain access to such files, the problems of acquiring appropriate software are not inconsiderable. This difficulty can be traced in part to a structural problem in the development of hardware and software in the U.S. economy. The principles of competition in marketing products and their rapid obsolescence preclude a rationally developed and coordinated information system. Where each agency has autonomy to develop its own system independent of all others, including choosing its hardware and software, attempts to collate information by merging

information from different agency files will be a nightmare of data structure, manuals, and programs. Even where each output can be separately programmed for subsequent collation in a merged file, the cost of separate tabulation and merging may make the approach infeasible.

Our examination of structure and process in EDP or ADP information systems on white-collar law violations leads us to conclude that at the present time they pose major barriers to the collation of information on these matters. Where barriers to sharing information are breached, either by an agency accessioning some information that lies within the domain of another or through actual sharing of the information by its transfer or permitting direct access, there is little reason to conclude that it facilitates the collation of information. An exception is those instances where sharing permits one to assess duplication in courts--a matter we shall discuss at a later point.

Statistics as an Organizational Complex

The Insulation of Agencies from the Statistical Orientation

Statistics as an Institution. With our emphasis on statistics as the products of organized ways of knowing, attention to the field of statistics itself as a social organizational complex can serve to illuminate the problems and prospects for statistics on white-collar violations of law. Among the many conceptual referents for the word "statistics," one that is universal, although usually highly implicit, is statistics as an institutional complex. The statistics institution has members (including, but not limited to those whose primary occupational self-identification is "statistician"). It possesses various attributes of other organized professions. Crucial is its base in the disciplinary structure of the university system in which much of its fairly systematic and highly esoteric culture of practice is developed and is transmitted to those recruited for the discipline. Some properties of the statistics culture it shares with science in general; others are distinctive to it. That culture includes not only a body of knowledge--theoretical, substantive and practical--but also philosophical orientations, a normative and ethical structure, and conceptions regarding ways in which its activities can and should be socially organized. Matching its members' self-conscious identification of, and with, statistics as an institution are more or less coincident public definitions of it, of its functions, of its institutional legitimacy. Statistics is accorded a position of varying importance in many other social institutions, ranging from the vast ministries of statistics and census that exist in some governments to the statistical quality

control consultant retained for a small firm. The penetration of other institutions by statistics can be purely cultural, this culture being diffused widely by means of the educational institution and by other media. The statistics institution is an historical product--a product both of dynamics internal to it as a knowledge discipline and of its interactions with other social institutions.

The Variable Influence of Statistics. We have contrasted repeatedly the state of statistics in the area of our present concern with the relatively advanced state of statistics dealing with other aspects of the crime and justice field, particularly statistics on the Part I classes of "ordinary" crime. Much of the difference can be understood by the much earlier involvement of the statistics institution with the former than the latter. Indeed, the beginnings of crime statistics are coterminous with the beginnings of statistics as an identifiable field. This early concern with crime statistics is often attributed to the ideological orientation of founders of statistics, as are the early penetrations of organized statistics into the activities of the lower criminal courts and the police (cf. Cullen, 1975). These theses about statistics as originating in reform movements oriented to protecting and enhancing particular economic class interests parallel those which seek to account for statistics being oblivious to white-collar violations, while vigorous in its concern with crime.

In this work, however, we have been concerned with less facile understandings of why the statistics field cannot comfort itself as readily to a grasp of the phenomena of white-collar law-breaking and of why the organizational apparatuses of society for dealing with these phenomena comfort themselves less readily to the institution of statistics than do various other organizations. It is true that there is also a more profound level of discussion of how ideological influences on its history have made for the distinctive epistemological and methodological bents of statistics. Understandings of this kind in turn can lend understanding to the low degree of accommodation between statistics and the government organizations of our present concern. Some of these orientations of statistics, which stem from the 19th Century liberal orientations in which its roots lie, surface as targets of common criticisms of statistics, such as are discussed by Kruskal's (1978:1083-1086) article on the field. The aspects of statistics subject to criticism include (a) its probabilistic orientations to variability (b) among highly abstractly categorized units (and, hence, dehumanized, if human units, and denatured, if not), (c) the units being treated as of equal standing (as are the members of the human populations of liberal democracies) and, (d) they are

taken (usually by random sampling) from (preferably large) populations and with (e) special attention given to averages.

The different degrees of historical involvement of statistics with various institutions, along with the varying degrees of compatibility with statistical orientations of the operative style dominant in particular organizations, help explain the state of development in them of pertinent statistics, but they do not provide a sufficient explanation. It is noteworthy that some institutions in which statistics has long thrived, and which occupy a particularly prominent place when we turn our attention to white-collar violations, have not engendered good statistics on white-collar violations in either quantity or quality. This is true, for instance, of the insurance enterprise, private and public--an institution that is an excellent position to note and record systematically transactions of importance to our field. The insurance institution has common historical paternity with statistics and it retains close family ties with the organized discipline. But, as we have noted, we find adequate statistics neither on insurance enterprises as victim nor on the claims made by those whom they insure against victimization. We have also found seriously wanting the pertinent statistics in agencies devoted to public health, another field which was an integral part of statistics at the very beginning of its emergence as an organized discipline with that name. In these cases, we have had to identify other features of internal organization and of external relations to account for the current departures from statistical adequacy in the pertinent spheres and for the great obstacles that confront any attempt at remedying the problems.

Statistical and Bureaucratic Organization. The very word, "statistics," has its origins in informational activities about and in the interests of the state. Even though much of the original meaning of the word no longer applies to the definitions of the institution by its members and, while it has become progressively less descriptive of what most statisticians and statistics do, statistics and governments have had and continue to have a special affinity for each other. One popular meaning of statistics is gathering and arranging the kinds of numerical information that figure in the Statistical Abstract of the U.S. This meaning continues to be an accurate depiction of a part of the field; one that occupies a solid position in the discipline and that does have influence on the objects of attention of most of the rest of the discipline (Cf. Kruskal, 1978).

There are readily apparent similarities and hence affinities between the statistics institution and the bureaucratic institution not only organizationally, but also

in philosophical orientation. Bureaucracies also typically deal abstractly and universalistically with large numbers, in line with an ethic of objective detachment. Systematic information also is often their primary stock in trade. Much of statistical work itself is of a large scale and requires elaborate bureaucratic organization--the Bureau of the Census being prototypical. Within the statistics institution, consequently, there are many persons quite at home with and adept at the ways of bureaucracy.

The agencies of our concern, however, are not necessarily typical of agencies of the bureaucratic form. In his celebrated social typology, Weber (1946 [1921]:196-244) notably coupled the bureaucratic and the legal in a hyphenated compound ideal type. Most of the units of government agencies of our immediate concern are that variant of the legal-bureaucratic type in which the first aspect of the compound has far more weight than the latter. Often, they embody many of the traditionalistic, nonrationalistic elements of the legal institution and the legal profession. Organizations with pronounced features of a less rationalistically empirical and more "traditional" type are more incongruous with the statistical orientation and with statistical activity than the more purely bureaucratic organization. The legal-traditional, as opposed to the legal-bureaucratic character typical of agency organization in the areas of corporate regulation compliance and enforcement also seems partially explainable by the way in which such agencies have to interact with the private sector in which white-collar violations take place. The interactions with the corporate world common among agencies we have examined are not directly with the corporate actors or their actions that are violative, but rather through the interface of the corporation's private law firm or legal counsel. The former, particularly, has organization, styles and culture alien to the bureaucratic form to which statistics has historical affinity. The character of the government agency and its operative style are affected by its adaptation to those of the actors with which it forms a common arena.

In addition, particularly in the case of some of the smaller regulatory agencies, but also often true to some degree of the Department of Justice or some of its major divisions, the entire character and style of action of the agency are subject to highly personalized, idiosyncratic direction by a powerful political leader with heroic aspirations and strong external political support resting on personal "charisma." In various of the time series used to illustrate this volume and our project's supporting reports on the data of individual agencies, it has been necessary to explain abrupt irregularities and discontinuities of the series by the coming or going of such a key leader.

We have been studying, then, organizations which have been relatively insulated from the penetration and influence of the statistics institution and its culture that have affected other parts of the bureaucratic apparatus of government. This immunity follows both from the character of these institutions and the ways in which they interface with the domains in which conformance or violation of pertinent law occurs.

Promising Organizational Transformations

The project responsible for this report may be regarded as seeking to increase the sway of the statistics institution in the organizational domains concerned with white-collar violations of law. That project is itself a product of organizational change representing the growing social importance and legitimacy of statistics, generally, and its recent rapid extensions into the realm of the institutions of justice. Those changes have been of a piece with broader social developments affecting the organizational character of all the institutions of our concern and the greater, although still variable, penetration of them by the statistics institution and its culture. These quite radical organizational developments are what lend promise to the possibility that there can eventually be the quite radical organizational changes in many agencies that would be a precondition to the development of a statistical system for the white-collar violations area.

The following are the developments we see as transforming the prospects for the systematization, and improvement of statistical information on white-collar violations of law:

- (1) Radical expansion has taken place of national governmental concern, organization and activity in the realm of crime and justice. This development may be dated as beginning with the work of the President's Commission on Crime and the Administration of Justice in the mid-1960's, and continues to the present day.
- (2) The expansions of both the purview and the resources of the Department of Justice have placed it in a position to fulfill central informational functions for the highly decentralized federal, state, local and private institutions with crime and justice responsibilities and it is also in better position to exercise major general influence upon these institutions.

- (3) Increased federal involvement brings into play the special affinity at the federal level for statistics, and particularly statistics of broad generalized scope and power. This is partly because statistics becomes economic, and indeed, a meaningful function only for an activity that attains a certain level of scale.
- (4) Federal activity also reflects the more intense political demands that exist at the national level for attention to white-collar offending, relative to that existing at other governmental levels and in other social spheres. It reflects also the greater potential that exists at the federal level for dealing with pertinent business activities by organizations of national and multinational scope. The proliferate extensions and intensifications of federal law and regulation make more and more activity potentially of a violative character, and, thus, the populations of events that can be fruitful bases of statistics.
- (5) The development and systematization of organizations specialized to statistics and to statistical research at the national level of criminal justice organization introduces specialists with primary responsibility and commitment to the functions of statistics and the norms of the discipline.
- (6) The progressive institutionalization of the statistics function is evidenced by the incorporation into statutory and administrative law of provisions responsive to the requirements and norms of the statistical function--provisions such as privacy and confidentiality protections that accept the statisticians' norm of organizational separation of information for statistical purposes from that for legal or administrative case action and which immunize the former from contamination by demands from the latter.
- (7) The elaboration and rationalization of the broader federal statistical system and its supportive functions for the criminal justice statistics system, including recent efforts to provide centralized means of overcoming the barriers to the production of general statistics that inherent in the highly decentralized and complex character of federal organization (Duncan, 1980; Bonnen, 1980).

A general point of much of our discussion has been that the most fundamental barriers to the availability and quality of statistics are inherent in ways in which the agencies of action and administration are organized. The remedies, to the degree they exist at all, are therefore remedies of social organization. These remedies may reside in (a) grafting statistical record and data systems onto the action systems, for example, as the Uniform Crime Reporting system is a graft onto the police systems of the nation, (b) organizing systems for generating and processing statistical information that are completely independent of the action system but that rely wholly on information it generates, as does the PROMIS system in the prosecutorial domain, or which rely in part on such information and partly on independently generated data, as is illustrated by the NEISS injury statistics system, or (c) the very restructuring of an action system itself so that its activities are carried out in a manner more consistent with the generation of adequate statistics for serving its own purposes of more rational and equitable action, as well as statistics of a more generalized character for informational needs of higher levels of government and social organization. For the last, we can point to no one thoroughly realized example, although concepts of such reorganization are more or less explicit in various models for the reconstitution of the state at least since the time of Vico ([1721] 1965). Such reorganization, however, is a continuously working, endemic tendency in the evolution of government and is manifest in various developments we have considered above.

SUMMARY

There are substantial information system barriers to the collection and collation of statistics on white-collar law violations. Barriers to the development of statistical time-series on white-collar law-breaking arise from the lack of uniformity in data collection among different agencies that contribute to a violation series.

Uniformity in data collection and reporting can be enhanced when managerial objectives in statistical information are coupled with requirements of theoretical, statistical, and data collection models relevant to white-collar law-breaking and to statistical reporting of it. The theory of social control provides major models for the development of statistical information systems on law-enforcement and regulation. Among the major social control models that merit consideration are those relating to the mobilization of law enforcement, the deterrence of law violations, compliance with the law, the administration of justice, and the prevention of offending.

Apart from the importance of theoretical and statistical models in developing a uniform statistical information system on white-collar law violations, certain features of administrative management systems likewise affect uniformity. Principal among these is the institutionalization of discretion in deciding what information is to be processed and of how matters are to be decided. Since discretionary decisions are highly institutionalized in law enforcement and regulation, it is unlikely that one can do more at this point than attempt to determine its effects on current information on white-collar law-breaking. It is important, however, to determine how discretion affects what is excluded from an information system as well as how it affects what is included.

An historic barrier to the development of statistics on white-collar offending and compliance has been the relative incongruities of the statistical institution with the organizational climates of many of the agencies with major roles in this area. Various developments associated with the extension of the federal role in the realm of crime and justice, and particularly that of its Department of Justice, give promise of alleviating this barrier. These developments have led to creation within the Department of specialized organizational capabilities for statistics that may foster the organizational change necessary for the development of a statistical system in closer accord with the criteria of good, useful general statistics that have been applied in this report. The capacity to do so will be in considerable measure dependent on broader developments in federal statistical organization and policy. Systematic national white-collar offending and compliance statistics can come into being to the degree that there is realization of the concept of a federal statistical system transcending the complex organizational division of responsibilities for administration and action in the field among a multitude of offices and agencies. The availability of information for such a system and the quality of that information as data for statistics will depend upon the extent to which that system is successful in diffusing through government the orientations, the models, the norms and the practices of the statistical institution.

CHAPTER IV

ORGANIZATIONAL SOURCES OF VARIABILITY IN TIME SERIES ON WHITE-COLLAR LAW-BREAKING

Apart from the effect that the structure of information systems has on uniformity in statistical reporting of white-collar law-breaking, the ways that each agency organizes its data collection and reporting and the ways that its environment affects the quantity and quality of information on law violations are also barriers to uniformity. There are a number of internal sources of variability treated below, principal among them being the barriers to uniformity that arise from the ways that agencies develop and classify information for electronic processing and the ways that they cope with inaccuracy in information. There similarly are important external sources of variability in defining, classifying, and counting matters as white-collar law violations. We review a number of them below, especially those that arise from changes in legislative and administrative mandates for an agency. The life course of any statistical series is substantially affected by these internal and external sources of variability.

Organizational Barriers to the Collection and Classification of Information for Its Statistical Processing

The ways that each agency organizes the collection and classification of information for electronic processing affects its collation for statistical time series. Each agency creates barriers to collation of information in the way that it determines units of data collection, organizes information into records, and provides for its accessioning and up-dating.

The File Record. To retrieve information from an electronic information system that is defined as belonging together, it is necessary to have some means of tracking information in a common record. This means that ways must be found to define information in a record and give it a unique identity or set of identities. Record systems also vary in how information is stored and retrieved, e.g., information can be arranged hierarchically or in a horizontal structure only. All of these properties of storing and retrieving information affect the extent to which it can be made comparable across agencies.

(1). Multiple Counting of Basic Reporting Units. A basic problem in collating information from different reporting sources is that one runs the risk of counting the same information or unit of measurement more than once. Since information is processed by more than one agency, the same units enter into the count more than once. The formal

legal system provides for transactions among federal executive and judicial agencies with respect to the same instances of the violation of Federal laws. Almost without exception only the Department of Justice may bring actions in criminal matters. The U.S. Courts decide them. A substantial class of civil matters also can be handled only by the U.S. Department of Justice, though an agency's powers to litigate civil matters depends upon its legal mandate.

For all criminal matters, then, there is a reasonable expectation that any given case will appear three times--as a case in the originating referring agency, as one in the U.S. Attorney's investigation/charge file, and as one in the file of the Administrative Office of the U.S. Courts. Indeed, if the case were referred from an agency such as the IRS, it might begin by being counted in its Collections Division, again on referral to its Criminal Investigation Division, then once more in the Tax Division of the U.S. Department of Justice, on filing by a U.S. Attorney, and then finally when disposed of by the U.S. Courts in the file of the Administrative Office--a total of five times. The case might also be counted by a sanctioning authority twice in the U.S. Attorney's file, if one counts both investigations and filings, for a total of seven times.

Quite clearly one would not want to count these events as separate instances except as they represent the statistics of a case processing system or for a given processing unit. But it is no simple matter to estimate criminal referrals using the information from the U.S. Attorney's files nor would their case count represent these matters by type of violation, since referring agencies may classify matters differently. Moreover, each agency accessions some cases from sources not represented in the files of others. Separating and counting unique cases in each agency is no simple matter when there are discrete systems for counting the same events or cases. Employee violations, for example, may be counted in the Internal Security file of an agency, on referral to the Civil Service Commission (and its successor agencies, the Office of Personnel Management, the Merit Systems Protection Board, and the Office of the Special Counsel), and in the investigative files of the FBI, from whence they might be referred for prosecution.

One solution to this interagency problem of multiple counting is to develop a system of unique identification for the same units that are processed in more than one information system. That kind of system prevails in some countries, such as Finland, where there are national registers of both individuals and organizations. There are a few instances where a common identification number is used in more than one information system that has information on white-collar delicts. U.S. Attorney's and Administrative

Office files use a case docket number for case filings to identify cases in their respective systems, but such numbers are not available for matters referred to U.S. Attorneys from referral agencies. The number is helpful in eliminating duplicate counts for prosecution and court cases but not for those same cases in the many different agencies that are sources of referral. Similarly we noted that the same mine identification number was used by MSHA and the Bureau of Mines.

Multiple counting can occur within agencies as well as across them. IRS can trace cases in terms of the Social Security number attached to individual returns and by employer identification number for employers. Yet this fact does not prevent duplicate counting within IRS statistical information systems. Long (1980) notes there is double counting of both taxpayers and investigations, though its extent is currently not known. Double counting occurs for taxpayers when the case includes a corporation and one or more officers. Although there may be only a single violation, the IRS system counts each taxpayer as a violator, leading to estimates of violations from counts of violators. Moreover, there can be a kind of undercount as well in that if a single case includes more than one tax year, separate offenses can be counted as one.

Still, when a case is closed out, a new case number is assigned a taxpayer if that taxpayer is returned on a new case (but not for new offenses if the case were still in progress). Hence some offenders will enter the count more than once over a given number of years while others only once because a "new" case depends upon whether or not a previous case is "open" or "closed."

Because a case number includes as an integral part a numerical code for the district in which it was initiated, cases which are transferred between districts are given new case numbers. Thus there is a double counting of investigations, as well.

Problems of multiple counting also can arise in the same agency in a type of violation. We have called attention to this previously in our discussion of point-in-time versus continuing violation events. For an inspection system, it is quite possible that the same continuing violation can be counted more than once if the inspection's detection of a violation is used as a count of violations. This problem is not easily resolved, even by definition, as the following example illustrates.

A regulatory agency could define each product violation as a "recall" and treat recalls as violations or all of them as only a single violation. Each of the single product violations could in theory be a separate civil suit for

damages, the basis of several different criminal suits, or, if civil suits, the individual suits might be consolidated as a single "class-action." Moreover, were the product failures to be discovered through a single inspection, they might be treated as one, while, if they were picked up in different inspections, they would be counted as more.

This example is not chosen to confound hopelessly the issue of definition of multiple versus single events and their counting, but to raise the issue of whether a single set of criteria can standardize definitions and counting for all types of violations. The answer is probably not, but it would be an interesting research exercise to see what possible ways may be developed to resolve the issue of multiple counting and classification of events. Parenthetically, we note that what has been said about events or violations applies to all other units of counting as well.

There is another and special problem in counting aggregated violations as compared with counts by type of violation. Some kinds of violation of law are single offender events, particularly violations that do not involve organizations. Violations involving organizations are more likely to include the counting of both organizational and individual violators for the same violations, hence to run the risk of treating them as multiple counts of events. Even more to the point, some violations are by definition virtually going to involve both multiple organizations and multiple persons as violators. Antitrust provides an excellent case in point, particularly price-fixing violations. Just how extensive the involvement may be in a single case is provided by the following example of the U.S. Department of Justice filing of a felony indictment charging nine corporations and seven individuals with conspiring to fix prices of electric weld steel tubing and a companion civil suit, charging violations of Section 1 of the Sherman Act. The suit was filed in U.S. District Court in Philadelphia (DOJ Release: 12/14/79). Named as defendants in the indictment were:

Berger Industries, Inc., Maspeth, New York; Philip Castiglia, its Vice President, Tube Division; and Irving Roth, its Vice President, Marketing;

Daily Corporation, Montgomeryville, Pennsylvania, and James A. Russell, its President;

Hofmann Industries, Inc., Sinking Spring, Pennsylvania;

Markin Tubing Inc., Wyoming, New York;

Miller Tube Corporation of America, Flushing, New York, and Martin Miller, its Senior Vice President;

Roth Steel Tube Company, Cleveland, Ohio, and Stephen D. Oliphant, its President;

Tuesday Industries, Inc., Cornwells Heights, Pennsylvania, and William Daily, its Vice President, Trade Relations;

U.S. Metal Forms & Tubes, Inc., Muirkirk, Maryland; and

Van Huffel Eastern Corporation, Gardner, Massachusetts, and Jack W. Shick, its assistant treasurer.

The Department of Justice noted that the criminal indictment charges that beginning in 1962 and continuing to 1979 the defendants and co-conspirators conspired to fix the prices of electric weld steel tubing. The civil suit names the nine indicted corporations as defendants and seeks injunctive relief based on the allegations in the indictment. The maximum penalty upon conviction under the indictment is a \$1 million fine for a corporation and a \$100,000 fine and three years in prison for an individual.

This case also demonstrates that all organizations could be counted in both civil and criminal suits.

We can introduce yet another definitional and counting problem with respect to the occurrence of events. Under certain circumstances, almost an entire industry may be involved in some form of white-collar violation of law. It has been alleged in hearings of the U.S. Congress, House Committee on Small Business, (1978) that a substantial proportion of all trucking firms are involved in common violations of racketeering, as are most wholesale meat firms. Whether one treats these as offenses by industries, offenses by firms, or offenses by the individual units related to firms, e.g., truckers or buyers and sellers, will have an impact on the amount of violation counted. But the counting of both firms and their distributive units as violators for the same violations clearly is an instance of multiple counting.

Shapiro's study of SEC violations (1980:93-102) provides further illustration of how problems of multiple counts are embedded in the structure of violations. A not atypical securities violation usually involves a series of different violations by a number of different actors victimizing a number of different parties in a variety of situations over time. Investigations could be docketed in a number of ways for such events. Shapiro (1980:95) notes that the SEC might treat them as a single investigation encompassing all aspects of the offenses and the parties involved in them or it might begin by opening a single investigation and, subsequently, through additional

investigation, docket several cases, or finally, it might have opened several investigations because they arose from different sources in different SEC regions (Shapiro, 1980:95-98). It is patent that there is no appropriate number of docketed cases in such instances and that from a practical point of view an agency is unlikely to adopt a rule determining the number of cases to be docketed in such ambiguous situations.

The extent to which there are relationships among docketed SEC cases was estimated by Shapiro (1980:95) who found that at least one-fifth of all cases in her sample were related in some way to one or more documented cases in the population of cases. The estimate is conservative as Shapiro discovered (1980:96) that where there was information on an explicit relationship with other cases, 35 percent were opened as an extension of an already ongoing investigation.

An interesting question arises whether cases where there is multiple docketing differ from those where there is only a single docketed instance. Shapiro (1980:96-98) concludes that there was variation among regional offices with two of the SEC regional offices, given to much higher multiple docketing than other regional offices. She was unable to determine whether these regional differences reflect idiosyncratic docketing policies or differences in aggregate caseloads with available information. Multiple docketing was found to be related to both the magnitude of a case and to case prosecution. Cases unrelated to others are less likely to be prosecuted (46 percent) than are related cases (64 percent). Indeed, all forms of penalty proceedings--civil, criminal, and administrative--were more likely for related than unrelated cases. (Shapiro, 1980:100).

SEC legal proceedings also lead to multiple counts of cases. Shapiro found that in 83 percent of all cases, only one kind of proceeding was undertaken--33 percent civil only; 34 percent administrative only; 16 percent criminal only--but in 15 percent there were two proceedings and in 2 percent civil, criminal and administrative proceedings (Shapiro, 1980:187). Clearly, one expects the same SEC cases to be counted in a number of different files at different rates.

Basic Units for Records. Closely related to the problem of multiple counting of records of the same event is what bit or item of information is to constitute the basic unit to which information is attached in the information system. The basic unit ordinarily will comprise the principal unit of count, although having a basic unit for compiling information as a single record in no way precludes tracking information for different units of count within the

same or different records. In the National Crime Survey (NCS), for example, there are several basic units, principally households, individuals, and victimizations. It is possible to organize information in these separate household, individual, and victimization records so as to count information within and across records. Thus one can count the number of victimizations within a victimization record or attach them to persons or to households, or to both. Because each unit contains varying amounts of information, the file is organized in hierarchical rather than rectangular form.

In defining records, there is no single recognized unit that pertains to organizing information about white-collar violations of law. It is well recognized in dealing with law violations that one must distinguish among such concepts as the violation (or crime) event, violators, violations (whether of counts, indictments, legal code designations, cases, and related designations), victims, or other matters related to occurrences. Indeed, other units for organizing information may be the agency's intervention that leads to the definition of a violation, such as an "inspection," "investigation" or "report" or that represents the initiation of some line of action, such as a "case filing" or "an administrative hearing."

We shall briefly illustrate how diverse such basic units may be within systems that process information regarding white-collar violations of law. The basic unit organizing information about the regulation of metal and non-metal mines is the mine, with an identification number based on the actual physical location of the mine (or in exceptional cases, to a portable crusher that goes from one site to another or to a point where coal is being recovered). Within this record, information is organized by inspections. The most common unit perhaps is some form of a case that is to be managed in some sense by the agency. These include "cases opened for investigation" in such information systems as those of the SEC and the Criminal Investigation Division of IRS; similarly, it is a "case filing" in the U.S. Attorney's and Administrative Office of the U.S. Court's files. There likewise are manpower files where the basic units are either employees or employing units.

Note that it is relatively rare for an agency to organize information around offenders, such as the FBI does in its fingerprint files or in its career criminal files. It is extremely uncommon for a file to be organized around victims, or even around types of violations. Where detection or compliance is a primary objective, occasionally the file may be organized around events that may lead to defining matters as violations or potential violations. This is the case with the NEISS information system of CPSC

where the basic unit is a case for emergency treatment that involved some product as the source of harm. Information on NEISS thus relates to a harm event that can be examined for potential violation of a safety standard, but only when such events are aggregated to define a condition of violation.

The fact that information files are not organized around basic units of interest in learning about white-collar violations, violators, and victims poses problems when one wishes to extract that information for collation with that from other agencies or even to do a statistical profile for a given agency. An investigation organized file does not automatically yield violations, though those cases may be in a subfile. The violation may be encoded as a "principal" charge, the "first filing" or by some other rule, or there may be multiple charges recorded. Some files may include information on victims while others will lack that information altogether. Some will include information on losses while others will have no information on harm or loss. What is attached to the basic unit will depend primarily upon what was originally regarded as essential to the management of a case or to identify certain basic conditions about states or statuses of other units in the system. Often it is impossible to establish a rationale for what units are included and excluded from an information system. The only certainty is that one cannot find information on all of the principal units that relate to violations of law (events, violations, violators, and victims) in all files.

But the choice of a basic unit around which the record is structured has other and important implications for the derivation of information from it. One may be unable to track certain kinds of information in a file precisely because of the way information is organized with respect to a basic unit. A good illustration is provided in the U.S. Attorney's file.

There are three units around which information is organized in the U.S. Attorney's file: cases, matters, and defendants. A matter becomes a case when an indictment is filed for a defendant in a U.S. Court. But matters and cases are kept track of through the basic unit of a defendant, the organizing unit in the record. Thus, if there are 10 defendants involved in the "same" event, each will appear in the system. Of the 10 defendants, however, some may be classified as having one type of violation and some another, since that depends upon the charges entered or filed following indictment. Unfortunately, only one of the defendants in the file will be designated to count the "matter," since otherwise there would be as many "matters counted" as there are defendants, leading to multiple counting of the same matter, and one defendant will be used to count the "case" for the same reason that while each

defendant is filed upon, together they constitute a single case. The defendant listed to count the matter is chosen according to one rule and the defendant to count a case by another, a rule that is only marginally related to classifying the matter as a type of law violation. The rule for case counting is that the first defendant on whom there is a filing becomes the "case counter." If we define the violation in terms of the case counter there unfortunately is at least one source of bias in "first filing." Persons who plead guilty to gain immunity from prosecution are generally the first filed cases. The object of filing on the plea is to induce other pleas or to file upon them based upon the original plea. Some defendants in the same case may not be filed upon until much later, since they may not be apprehended until the case is filed. Thus, they do not have an opportunity to be the defendant defining the case. These rules for case counting if used to define violations lead to less serious matters defining them than would be the case if the most serious one charged against a defendant were the rule. That, unfortunately, is a difficult search routine, given the structure of the file.

One other illustration may be helpful in showing how such structures impose important limits or biases on information. Where there are multiple defendants in a case, one must be careful to recognize that for a given category of violation, the defendants are not a true count of all those involved in an event. While the count of the event will give a number of defendants, it will not provide a categorization of their violations. Suppose, for example, that there are 10 defendants in a matter where one pleads guilty to obtain immunity from prosecution. While the record permits one to show one case filed with 10 defendants, the defendants would be tracked in different ways. If the person who obtained immunity is charged with a different offense, that violation category is the one to which the case filed will be charged, but only one defendant will be tabulated with that violation. Nine others will appear in one or more other violation categories as defendants "without any case reported as filed" for their violation! The same can be true for matters. There would be no "matter received" for the case filed with a grant of immunity and no defendant for that matter. But there would then be zero matters filed and 9 defendants for the other violations--though there were of course 10 defendants in the original event. To follow a cohort of cases through to their disposition is thus no simple matter in this file. Knowing the structure of the file and how it tends to coerce unit counts keeps one from making assumptions that the defendants are a true count of all those involved in a given violation category for cases filed or matters received. Practically, this will usually be the case, because of the structure of offending and of charging, but conceptually and operationally it is not so in the file.

How these file practices affect the production of flow statistics for matters received by the U.S. Attorney's in a given year is illustrated in a special tabulation we had prepared from the U.S. Attorney's file (Table 4.1) to explore the possibilities of reporting flow statistics. Table 4.1 attempts to show how all 1,612 matters received by U.S. Attorneys in 1975 on referral from one agency, the IRS, were disposed of in a period 1975 to 1978. Matters received may be disposed of by their termination as matters, by remaining as pending matters, or by filing a case in a U.S. District Court. Cases filed on any 1975 matter should be equal to cases terminated and still pending at any point in time.

That matters do not quite add in this way is evident on examination of the information in Table 4.1. In the aggregate there is an excess of 28 matters received from IRS over matters terminated and pending plus cases filed at the close of 1978. This in all likelihood reflects some loss in case tracking from one year to the next. For any given category of violations, the matters filed may not equal matters pending and terminated plus cases filed. Differences here may be due to updating practices but also to the practices just discussed of how the violation status of matters and cases are defined when the defendant is the base unit in the record. There were 139 "fraud against government" matters received from IRS for investigation in 1975. Of these matters, 37 were terminated without a case filing and 4 were still pending at the end of 1978. But only 87 matters had a case filed, leaving a net of 11 matters for which disposition is not recorded. The main reason for this, in all likelihood, is that when the matter was received and classified as "fraud against the government," some other violation was used in filing the "matter" as a "case." One can also observe in Table 4.1 that the 44 bribery matters received from IRS are all disposed of by 1978 with 8 matters terminated and 36 cases filed as bribery. Clearly, it would be mistaken to assume that with the present file structure and programs one can do more than provide a crude description of the flow of cases in the U.S. Attorney's offices. Given updating practices for changes in filings, it would not be possible to show how matters were reclassified on filing, except in terms of their "current" filing status.

One must simply conclude then that the choice of units of count around which information now is organized in a record ordinarily will preclude counting of matters by uniform rules as one moves from one information system to another. Indeed, the nature of the defined units lack comparability in many instances.

Table 4.1 Disposition of 1975 Matters Received by U.S. Attorneys in 1975-1978 on Referral from U.S. Customs, by Violation Category

Agency 415 Customs Violation Category	1975 Matters Referred	Matters Pending				Matters Terminated				Cases Filed				Cases Pending				Cases Terminated			
		1975	1976	1977	1978	1975	1976	1977	1978	1975	1976	1977	1978	1975	1976	1977	1978	1975	1976	1977	1978
No Violation Category	97	23	1			26	2			43				22				25	2		
Anti-gambling (161)	2	1								1	1							1			
Controlled Substances (163)	182	18	12	18	8	20	8	2	1	164	1		1	34	24	22	16	93	32	4	6
Anti-Racketeering (164)	1									1				1	1						
Counterfeiting/Finance enemy (166)	3	1				1	1			1	1							1			
Obsecracy (170)	2					2															
Motor Vehicle Theft (171)	1									1				1	1	1	1				
Conspiracy (172)	20	11	5	2	2	18	1	1		17	3	1		13	4	3	3	5	12	4	
Injury to or Interference with Government property (174)	1	1				1															
Theft of Government property (175)	3	1				2	1			2				1				1			
Other stolen property (176)	3					1				2				1	1	1	1	1			
Kidnapping (178)	3									3								2			
Other crime of violence (180)	9					1				8				2				4	2		
Weapons control (181)	67	8	1			48	1			19	3			8				11	12		
Fraud against Government (182)	48	9	4	2	2	16	6	1		19	1	1		7	1			8	7	2	
Crime affecting mails (184)	1									1								1			
Interference with Government Officers (185)	51	2				18	3			27	2			7	1	1	1	20	8		
Retaliation of Office (186)	4									4				2				2	2		
Bribery (187)	4	2								2	2			1				1	3		
Conflict of Interest (188)	1	1				1				2				1				1	1		
Intimidation (189)	1																				
Obstruction of Justice (192)	15	4	3	2	2			1		13	4			2	1			11	5		
Perjury (193)	1	1				1															
Social Security Act (197)	—	—				2						1		2					2		
Post Inspection Act (198)	1					1															
Acquisition Records (199)	—																				
Shipping (incl. crimes on high seas)(199)	34	6	2	2	2	12	3			37	1			9	2			29	7	2	
Transportation of specific items (199)	—							1													
Detention Service (199)	1					1															
Immigration (199)	8	1				1				6				3				3	3		
Passports and Visas (199)	2	1	1					1		1								1			
Food, Drug, and Cosmetic (199)	1	1				1															
Customs Laws (199)	306	94	24	18	9	85	21	13	2	126	11	1		44	11	11	10	78	27	4	2
Financial Institutions (199)	—																				
Wills (199)	2					2											1				1
Cases (199)	3	1	1							2								2			
Citizenship and Naturalization (199)	3					1				2				1				1	1		
Hell (199)	4									4				1	1	1	1	3			
Bank and Banking (199)	1									1								1			
Accessory after Fact (199)	1									1				1							
Jurisdictional statutes (199)	30	1	1	1		4				23	1		1	2				23	3		1
Contempt (199)	1									1								1			
Aiders and Abettors (199)	3	1	1	1						2				2					2		
Juvenile Delinquency (199)	3									3				1				2	1		
1 (199)	—			1	1											4	4			3	2
1 (199)	390	—						1								3	3				1
1 (199)	300		3			28				10								28			1
Treason, Sedition, Subordination (199)	400		1				3			3											
Foreign Policy (199)	400	4				1				3				2	2	2	2	1			
Too (199)	300	7	2							3	3			4	2	1		1	3		1
GRAND TOTAL	909					339				543				4(1)				543			

Other Units of Count. Some other problems relate to the effects that choice of basic units of counting in a record have upon the collation of information. A few of these are briefly mentioned.

First, it is no simple matter to treat all matters as discrete events in their counting. Some matters are continuing violations in some sense, though they may be treated as discrete events in an information file. The file systems of two information systems may illustrate the problem. The FDA does inspections of sites and determines violations on the basis of samples taken at the sites and their results. It reports sample compliance results. It is very difficult to know how to treat such statistics as violations for a number of reasons. The number of samples varies by inspection site and they do not relate to discrete matters. But as important is the fact that each inspection occasion may simply represent new samples of the "same conditions" if they remain uncorrected.

EPA water pollution data provide another example. A permittee may be emitting pollutant on a more or less continuing basis, and there may be monitors detecting that pollution. Each record in some sense is an event and a violation can be charged for it; yet in another sense they are continuing events. Indeed, one can have as many violations as there are measures of the same continuing event.

All in all, this problem relates to a central issue of how events are to be defined and measured as violations, given indeterminacy in their timing and discreteness or patterning in offending. This is no simple classification and counting matter for any major type of law violation, but it is a particularly intractable one in defining matters as white-collar law violations or in defining organized crime violations.

How many violations shall be counted depends not only upon whether one takes repeated measures of the same continuing event but upon whether a continuing pattern of behavior is made up of many discrete events over time, each of which can be treated as a violation. The problem is an especially difficult one where one is counting violations committed by organizations or of individuals and organizations in some organized transaction network. Shall each instance of over-pricing for gasoline, i.e., each sale, be treated as a violation as was the case recently in charges against a Boston retailer of gasoline or shall the repetitive pattern of over-pricing be treated as a single violation? Shall each product recall be treated as one safety violation by a producer or as many? That there are no simple answers to these questions in the way agencies report violations or prosecutors file on them is illustrated

by the following reports of the Inspector General of the Department of Agriculture of "food stamp" cases that led to indictments: (USDA, 1979:73-74).

(1). "The indictment and arrests in June of 55 individuals in the Baltimore metropolitan area terminated an 18-month joint federal and local law enforcement operation during which OIG undercover agents penetrated a series of fencing operations dealing in contraband, stolen property and food stamps. To date, 54 of these individuals have either pleaded guilty or have been found guilty at trial. Sentencing has varied up to a \$10,000 fine and four years confinement. (United States v. Albert Isella, et al, District of Maryland.)"

(2). "Sixteen individuals and one corporation in New York City participated in a scheme to traffic food stamps which involved wholesalers, retailers, bank tellers and check cashiers. The corporation, an authorized retailer/wholesaler, purchased food stamps at a discount from retailers and at least one fence. The fence got his food stamps from a retailer who purchased stolen Authorization-to-Purchase cards and exchanged them for food stamps with the help of a bank teller and check cashiers. The manager of a branch bank was paid by the corporation's owners to approve false checks used to cover their massive food stamp trafficking and excessive redemptions. Over a period of two years at least \$2.5 million in illegally obtained food stamps were redeemed as part of the overall scheme. Sentences to date have ranged from two years probation under the Youthful Offender Act to six months in jail, three years probation, and a \$10,000 fine. Investigation continues. (United States v. Shelton Blumhof et al, Southern District of New York.)"

(3). "As a result of an Office of Inspector General audit, we initiated an investigation into the issuance practices in many Cook County, Illinois, District Food Stamp Offices. We found case workers who obtained Authorization-to-Purchase cards. Our investigation has documented a loss of \$149,982 in food stamps. To date, 26 case workers and four others have been indicted in federal or state courts. (United States v. Elbert Hale, and others. Northern District of Illinois.)"

Quite obviously the different U.S. Attorneys each chose not to consider a particular instance of food stamp transactions a single offense. Rather the focus of indictment has been upon treating each individual and each organization as a single violator, regardless of the number of discrete acts of violation for any one of which they

might have been indicted--setting aside whether a single food stamp violation might be treated as a de minimus violation for which prosecution never is undertaken. We do not know how the Department of Agriculture counted these violations in its reports, though it appears that they counted these as single cases with multiple indictments. What seems apparent from these case illustrations is that unless one has some knowledge of how counts are made in an information system and some standards for defining violations and making counts of them, the merging of counts of violations from different agencies (even where they may involve quite similar kinds of offending) may be quite meaningless. Where a type of violation can be counted only on a discrete and infrequently occurring basis, it also will be misleading to merge it with others in the same class that can occur with high frequency since the latter will quickly overwhelm the statistic. To merge discrete events of individual consumer or stock frauds with ones defining these as a single consumer fraud or a single stock fraud would be erroneous. Yet such forms of counting are not uncommon where they are merged across agencies. Safety violations that can occur only infrequently by an organization are counted as violations with the same weight as those that may occur frequently.

The problem of merging counts of violations from different agencies is exacerbated when different violations from different agency sources are merged together in summary measure of violation. This is the case with Clinard and Yeager's summary measure of "illegal corporate behavior" for major American corporations. Their overall measure counts any kind of violation reported by one or more of 24 Federal agencies against a corporation in their sample. Major types of violations summarized by Clinard and Yeager (1979: 82-84) as occurring against parent corporations include manufacturing violations (35.5 percent), environmental violations (27.3 percent), labor violations (17.5 percent), administrative violations (9.6 percent), financial violations (4.7 percent), unfair trade violations (4.5 percent), and all other violations (0.9 percent). Since multiple events are charged more commonly in manufacturing and environmental violations, they of course load disproportionately on a summary indicator of violation. Some evidence of this loading can be inferred from Table 3 in their study, where the number of violations initiated against a parent corporation by major type of violation is reported. Financial violations are least commonly reported for any of the parent corporations and almost half of the corporations against whom actions for financial violations were initiated had only one action against them; less than one percent had five or more violations. By contrast, some violation is most frequently reported for manufacturing and almost five percent of all parent corporations had five or more manufacturing violations charged against them. The

number of violations of a given kind for which action is taken a corporation vary, to be sure, among corporations due to their type of industry and an industry's representation in the overall sample of corporations, a matter which to some extent, they take into account in predicting corporate violations. Thus, they exclude manufacturing and other violations related to a specific industry from their dependent variable, illegal corporate behavior, and include only violations common to all industries (1979:160-61).

A third problem, already treated elsewhere, is how one counts violations by and against organizations as compared with those by and against individuals. Unless these are separated in file structures, it is impossible to choose a rational base for the calculation of statistics, a problem we shall treat later. The failure of most file structures to systematically separate individual and organizational units remains one of the most serious obstacles to the development of a rational set of indicators of white-collar offending or to use these files to test hypotheses or theories about white-collar law violation.

Completeness of Records. A perennial problem in the development and keeping of records is their accuracy in the sense of the completeness of the information for any record or unit of it. It is commonplace to observe that information is lacking on a given characteristic in a given percentage of cases.

The completeness of a record or the extent to which the value on any variable is known for each entry of record is hardly a stochastic process. How complete the information is for any given variable in an information system depends very much upon some official definition of that item of information as essential for some purpose of management or work routine. The more essential and necessary an item to the accomplishment of an agency's mission or an employee's task, the more complete the information on the item is apt to be. The more likely an item is to be routinely produced by an agency the more likely it is to be recorded. Actions of agencies such as "filing charges," "opening" an investigation and "closing" it, and similar activities tend toward 100 percent completion in an information system, while the occupational position of an offender will have a considerable proportion of "unknown." Where information may be relevant only to a limited group of staff within an organization, e.g., a nonoperating division responsible for planning or research, or where it is regarded as useful only under limited circumstances, much less attention will be given by the data collectors and data processors to insuring that the item is recorded in each instance.

Unfortunately, it turns out to be the case that the variables on which information is most likely to be missing are those that explain behavior or conditions of violating. Commonly missing is information on the background characteristics of victims or offenders or of circumstances surrounding the event that are not immediately germane to the management of a case. Clearly this lack of completeness poses serious problems in using official information systems to test theories about law violation.

Just how serious such matters can be is illustrated by examining missing information for items in the data files of the Administrative Office of the U.S. Courts, one of the more carefully designed and established information systems providing information on white-collar delicts. Data tapes were made available to the Yale University Research Agreements Program on the Study of White-Collar Crime for seven U.S. District Courts.

Prior to their release to the Yale University group, the data tapes had been prepared for tabulation by various program routines that check the accuracy of information and its conformity to a coding structure. Still there were some codes that occurred for variables that were not defined in the data structure. This problem was far less serious, however, than that of "missing data." Missing data occurred both in the form of "no entry" for a variable to a code of "unknown or unreported" for an item. Together these two missing information "codes" accounted for a substantial proportion of missing data for some items, as the following tabulation (Table 4.2) discloses (Weisburd, 1979).

TABLE 4.2

NUMBER AND PERCENT OF CASES MISSING INFORMATION ON SELECTED VARIABLES IN THE DATA FILES OF SELECTED DISTRICTS OF THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Variable	Type of Crime				Total	
	White-Collar		Common		Number	Percent
	Number	Percent	Number	Percent		
Sex	578	17	281	25	859	19
Race	595	17	282	25	877	19
Education	656	19	297	27	953	21
Prior Record	895	26	339	31	1,234	27
Counsel	61	2	115	10	176	4
Disposition	0	0	0	0	0	0
Total Eligible Cases	3,410		1,110		4,520	

Information on prior record was missing in a surprising number of cases, a fact that may derive in part from the manner in which that information is obtained by the court. Background information on individual offenders also was missing in a very substantial proportion of cases. As expected, matters relating to counsel were usually recorded and those of disposition always recorded. Clearly matters related to the court's management of cases and its own actions are most often available to the information system. That information which ordinarily comes from other sources to the court, such as prior record of the offender and the offender's status characteristics, are most frequently unavailable.

One other piece of evidence is offered on the problem of completeness of information in electronic data processing files. For the U.S. Attorney's file we were able to assess the extent of missing information for a number of variables, such as agency source of reporting and violation category. Though both of these items are of some importance, it could be argued that the source of the case was more important

than the violation category. The reasoning is somewhat as follows. From a case management perspective, the U.S. Attorney ordinarily might want to continue some form of contact with the originating source of a matter referred. Since what violation is to be charged under the law falls to the U.S. Attorney's discretion, each perhaps has less interest in the information an agency provides with respect to the violation category of the matter referred. Indeed, no category may be stipulated on referral since only a description of the matters is given, leaving it to clerical employees to classify the information into a violation category. Moreover, where information on matters referred is missing for the violation category, one would expect these matters to represent cases or investigations that are of less interest to the U.S. Attorneys than are matters in which they file cases. Under such circumstances, one would expect proportionately fewer matters to be represented by cases filed than where there is missing information.

These expectations turn out to have support in the examination of the completeness of information on agency source and violation category items in the U.S. Attorney's file for 1975. Agency source was far more frequently contained as an item of information in the file than was violation category. Only a half of one percent of all matters referred and of cases filed lacked file information on the agency source of referral as compared with 1.4 percent of all matters referred lacking information on violation category. Moreover, although the differences are not large, in the aggregate 54 percent of all matters received had cases filed while of those where the violation category was missing for matters referred, somewhat fewer--45 percent--had cases filed. The greater importance attached to knowing violation category for cases filed than for matters referred also can be seen in the fact that violation category information was missing for 1.4 percent of all matters referred but for only 1.2 percent of all cases filed. One other statistic is of interest in this connection. Only a very, very small number of cases lacked information on both source of referral and violation category--about one and one half cases in each one thousand matters referred and somewhat closer to two in one thousand for each case filed.

Further support for what determines the completeness of information in a data system is found in Shapiro's study using SEC investigative files. Shapiro found (1980:114-120) that information lacking in the files conformed to much the same pattern that we have observed for computer files. Thus, the absence of information in computer files probably rests, primarily, as we have suggested, in practices of acquiring information rather than in coding it for electronic data processing systems.

Shapiro reports the proportion of cases for which any measure was missing for 108 variables she coded from the SEC investigative files (1980:506-542). She concludes her discussion of the reliability of SEC data by noting:

"Generally data quality is highest for phenomena pertaining directly to aspects of the investigatory and enforcement process. Variables pertaining to case disposition and the form of prosecution imposed and pertaining to the actual investigatory activities and their timing were of highest quality (missing data mostly less than 2%). Variables pertaining to more remote kinds of information, for example, characteristics of offenders--age, recidivism, experience, corporate size--or of victims--their number, naivete, social class--were of considerably lower reliability (missing data from 0 to 53%). Those pertaining to phenomena more central to investigatory issues--the nature of illegality, the source of the investigation, informal dispositional remedies--were of moderate quality (missing data 0 to 12%). Furthermore, variables which reflected general processes and issues were more reliable than those that required specific information--amount of money, number of victims, number of previous social control experiences, etc. (where missing data ranged from 14 to 37%)." (Shapiro, 1980:115-116).

Case investigation files, like computer information files, have more accurate information for those items related directly to case management. Less completeness for information is tolerated for items that explain behavior--information that is ordinarily not seen as germane to management of the case by persons who develop the information for the files.

Shapiro also observes (1980:115) that the data are of higher quality--both as to completeness and as to their general accuracy--when they are referred for formal prosecution than when they are not. Moreover, she suggests that the form of prosecution also has an effect on accuracy and completeness of records. Thus she found that while information on victimization was generally poor, it was far better where the prosecution sought to demonstrate significant harm had occurred to actual victims than when it had no such use for victim information (1980:116).

That there was variation in completeness of information by collection source was also evident in the SEC investigative files. Shapiro found, for example, that the rates of missing data ranged from a low of 4 percent in the Ft. Worth and Boston regional offices to a high of 34% in San Francisco (1980:123). Here again we find considerable evidence that variation in local administration of data

collection and the management of case processing has a major impact on variation in the completeness and accuracy of information.

Although our attention has focused on missing information on items of interest in case investigation or electronic data processing files, it should be apparent that one may have similar difficulty in locating information to verify case counts or of locating cases listed in an official inventory of cases. Both problems can be serious ones when one is working with original case files where many factors affect the storage and retrieval of files. But these same contingencies can affect which cases are accessioned in EDP as well as case information.

Discrepancies between actual and expected counts are not uncommon both in statistical reporting and in checking files against docket listings. In the special tabulations from the U.S. Attorney's file we were generously furnished by the Data Division of the U.S. Department of Justice, both they and we discovered that beginning with the cohort of all matters filed with a U.S. Attorney in 1975, we could not locate all cases in a succeeding year that had not been terminated in previous years. Coding, programming, and other clerical errors are said to be responsible for these case losses from the information system. Errors in updating information likewise may be responsible for some of the losses from the cohort.

Shapiro likewise found that the annual statistical reports of the SEC significantly underreport the number of investigations conducted if the count of all docketed cases is used as a standard (1980:79). She drew a sample of 581 cases from the list of docketed investigations for intensive examination, but after repeated efforts the Government Documents Center was still unable to locate 84 of these cases (or 19% of the original sample of cases) (1980:78). Often cases are misfiled, misplaced, or lost in the storage and retrieval that takes place over time; this seemingly accounts for the discrepancy Shapiro found in SEC files. Nonetheless, that is not entirely clear, as there is no independent means for determining the accuracy of the docket listing.

Updating Records. How a file system provides for update of its records may have a substantial effect on what can be learned about causal sequences, whether sequences explaining the behavior of white-collar offenders or of the legal agents in their roles as decision makers. We have noted previously that updating systems which replace records make sequential analysis more complex and less definitive. This is partly due to the fact that the status of any record at any point in time depends upon the rate at which agents produce information to update them. But it also is due to

the fact that the rate at which units behave determines their updating; the more active a unit, the more frequently it is updated in a continuous updating system. Each of these sources produces differences in the updating status of aggregated records at any point in time. Even cross-section comparisons, therefore, using an updated file can produce misleading results, since case attributes are weighted disproportionately by the rate of updating. The reported results may reflect neither the actual status of an aggregate of cases at a point in time nor the elapsed time between status at different points in time.

How an updating system is organized can have a substantial impact on the status of information in a file. Whereas in the U.S. Attorneys' file the clerks attached to local offices are responsible for updating, there reportedly is considerable difference in the rate such offices report update information to the central office and of how accurate and consistent are updating practices. Moreover, the central office for the U.S. Attorneys' data information system has a schedule for encouraging updates by local offices, but its efforts are not always successful. Record systems then may distort timing in sequences or even sequences of events if there are bureaucratic lags in updating, whether or not updating is by replacement or by continuous record.

Retention of Information and Its Accessibility. It would be a time consuming matter to document what files of information are generated in each government department, program, or agency that are relevant to the development of information on white-collar violations of law. Their number could easily be several hundred. Such a task, however, might usefully be performed so that investigators might be made aware of the nature of each data base and its accessibility to public use. This would be no simple matter if detailed information is provided as to availability of coding manuals, the nature of the file structure, and changes in them over time documented. That task was beyond the scope of this project.

What is apparent from our examination of data files is that considerable effort must be expended to gain access to information from any file that has relevance to white-collar law violation. Almost no file is currently available as a public use tape. Indeed, very few are prepared for use outside the agency. Normally they include unique identifiers. Considerable time will be expended, therefore, in gaining access to tapes that may be used by individual investigators. Attention might well be given to the preparation of public use tapes.

What is also surprising is that most agencies have not developed retention schedules for information in their case files or for data tape files. Clearly, there is no standard schedule for such matters nor for their archiving. Shapiro (1980:108) reports that the older case files of SEC are slated for destruction, though as of December, 1977 no case file had been destroyed. Long (1980) reports that IRS has destroyed tape files that were available several years ago on data bases for parts of the past decade. Since any substantial effort to reconstruct time series for past periods depends either upon gathering information from case files or from data tapes, it seems essential that attention be given to the retention of these major information systems until some determination is made of their utility for statistical series on white-collar law violations. Needless to say, the preservation of data tapes by themselves is insufficient; provision must also be made for access to all documentation relevant to their use.

Access to information is complicated by the location of information sources and of the expertise on them. While many of the major systems are located in Washington, D.C., some are not. The MSHA data file, for example, is located in Denver, Colorado, and much IRS information is located in the Detroit, Michigan metropolitan area. It is not easy to learn about information systems that are widely dispersed in space or to gain ready access to them in a way that makes them usable. Even more to the point, as noted earlier, many information bases are generated in local or regional offices and the original case file resides in those offices. There are, for example, 95 U.S. Attorney's offices to which one might have to turn if one wanted to investigate how matters are terminated and cases filed. The same is true for the U.S. Courts. In any case, we need to know more about how such local data bases relate to the national data bases developed from them. This requires some evaluation of the local production of national statistical systems--a matter deserving of attention in one or more special studies. Such studies are of both theoretical and methodological interest. One can investigate theoretical hypotheses about how systems that enforce, regulate, and sanction white-collar law violations vary by local organization. One can also investigate how local organization affects the accuracy of information.

Classification of Violations. The collation of violations, as we have repeatedly observed, depends in important ways upon how one defines violations and classifies them by type of law violation. Our concern here is with the definition and counting of types of white-collar law violations. A few matters previously ignored are given special consideration in this section, particularly whether one can use satisfactorily current legal classifications of law violation (or of crimes) in collating matters as white-

collar law violations and whether current systems of agency classification and reporting are sufficiently standardized so as to permit collation of violations from different sources.

Examination of conventional legal classifications of violations of law makes problematic whether the kinds of violations defined at law and for which counts are conventionally made can be treated as white-collar violations. Nowhere is this more apparent, perhaps, than in reporting for legal categories of crime that are often regarded as "white-collar crimes," e.g., forgery, bribery, or fraud--though the problem exists for any type of crime, given our criteria for classifying matters as white-collar crimes. The problem is to determine which of the matters counted are ordinary crimes or violations of law and which are political, organized, or white-collar violations (or crimes).

The basic violation categories used in statistical reporting by an agency ordinarily provide ambiguous cues as to which of our major types of law violation are included in each class of law violation. Consider the following report of offenses whose detection and investigation are the responsibility of the U.S. Secret Service (U.S. Treasury, 1978):

TABLE 4.3

ARRESTS AWAITING DISPOSITION AT THE END OF 1978

Type of Violation	Number of Arrests
Counterfeiting	783
Check Forgery	2,466
Bond Forgery	67
All Other	281
Total	3,597

Conversations with members of the U.S. Secret Service suggest that most of the crimes in their categories of offenses would be considered ordinary crimes in our classification of types of offense. Yet some counterfeiting offenses involve documents that would make the acts qualify as white-collar crimes. In other instances, organized crime is responsible for both counterfeiting and forgery. Some bond forgery would qualify as white-collar crime.

Clearly, one cannot depend upon violation categories such as these to classify matters in terms of our proposed types of violation. One might do so on the basis of the central tendency in classification, but that requires some knowledge of the relative proportion each type of offending contributes to a class of violation.

One way to deal with this problem of the heterogenous nature of most conventional legal violation categories and their use for classifying cases as white-collar violations is to do sample studies of classification of events to determine the relative proportions each type of crime constitutes for each class of law-violation. These proportions then might be used to allocate matters in a type of violation category to each of our proposed major types of law violation, including white-collar violations.

When white-collar violations of law are reported by aggregating information for a type of violation or for some aggregation of types of violations, it is quite apparent that certain types of violations contribute disproportionately to the aggregation. Moreover, since types of violations are either the prerogative of a single agency or because they derive largely from the enforcement or regulatory activities of a single agency, any aggregation across agencies will reflect these differences in agency contribution. Only a few agencies have the authority to investigate and refer tax matters, for example, though any agency may refer a tax matter for investigation to the Department of Justice or a U.S. Attorney.

Just how substantial a contribution any agency makes to an aggregate of violations can be seen by examining the contributions agencies made to a number of types of violations for matters referred to U.S. Attorneys in 1975. By special tabulations we are able to examine agency contributions to income tax violations (USC 18:1972-73; 26:7201 seq.), food stamp program violations (USC, 07:2011 & 2023); mail and wire fraud (USC 18:1341-43), securities frauds (USC 15:0077, seq.), and violations of the Securities Exchange Act of 1934 (USC 15:0078, seq.).

Income tax matters are referred to U.S. Attorneys from 10 Federal executive bureaus or agencies, but 79 percent of all matters and 81 percent of all cases filed are referred from the Internal Revenue Service. Not surprisingly, income tax matters are 76 percent of all matters IRS refers to U.S. Attorneys and 84 percent of all cases filed on matters referred by IRS. All Internal Revenue sources contribute almost 9 of every 10 income tax referrals to U.S. Attorneys. Though not shown in Table 4.4, income tax matters are less than one percent of the referrals from any other agency except for "Other Internal Revenue" units where income tax

TABLE 4.4
AGENCY SOURCE OF REFERRAL FOR INCOME TAX MATTERS REFERRED
TO U.S. ATTORNEYS IN 1975 AND THEIR CASE FILINGS

Referring Agency	Matters Referred		Cases Filed	
	Number	Percent	Number	Percent
U.S. Dept. of Justice				
FBI	49	3.1	36	2.8
All Other Justice	5	•	4	•
Postal Service				
Postal Service	4	•	4	•
U.S. Treasury				
Customs	7	•	8	•
Internal Revenue	1,229	79.0	1,062	81.2
Alcohol Tax Unit	61	3.9	42	3.2
Other Int. Rev.	94	6.0	83	6.3
Secret Service	21	1.3	17	1.3
All Other Treas.	79	5.1	53	4.0
Independent Agencies				
SEC	1	•	••••	••••
DC Police Dept.	6	•	6	•
Total	1,556	100.0	1,308	100.0
All IRS Referrals	1,612		1,259	
Pct. IRS Tax of All IRS		76.2		84.3

• 0.5 percent or less

Source: Special Tabulation, U.S. Attorneys Data Division, USDOJ

matters are 41 percent of all referrals and from "All Other Treasury" sources, where they are 43 percent of all referrals.

The pattern for food stamp violations is similar to that for income tax matters; 85 percent of all referrals and 76 percent of all cases filed in Food Stamp Program matters originate with the Food Stamp Program (listed above as an 'All Other' Agriculture referral source). (See Table 4.5.) When one adds referrals from the Marketing and Consumer Service of the Department of Agriculture, 95 percent of all referrals and 93 percent of all cases filed originate there. One also can see that food stamp referrals comprise a substantial proportion of the referrals from 'All Other Agriculture' with 65 percent of all matters and 56 percent of all cases filed from that source relating to Food Stamp Program violations.

Referrals for Mail and Wire Fraud to U.S. Attorneys present a somewhat different picture from that observed for Income Tax and Food Stamp matters. (See Table 4.6.) Although 13 agencies refer matters, most of them originate with the U.S. Postal Service or arise from FBI investigations. FBI investigations originate with referrals from other agencies, however. What this pattern discloses then is that mail and wire fraud investigations are not primarily matters that originate in the work of other agencies leading to direct referral to U.S. Attorneys. These referrals for agencies originate primarily from FBI investigations of the matters. Few mail or wire fraud matters are referred directly from any agency to the U.S. Attorneys, except for the direct referrals of the U.S. Postal Service.

The SEC referred only 13 matters in 1975 (though this represents about 15 percent of all their referrals in that year). (See Table 4.7.) What we can see for the SEC is that what may look like a sizeable number of matters to an agency--15 percent of all SEC referrals for investigation for criminal prosecution are mail fraud--is a trivial proportion of all mail fraud matters. Moreover, while a majority of all mail and wire fraud matters come to U.S. Attorneys from the U.S. Postal Service, these referrals represent less than 13 percent of all matters referred for criminal investigation by the U.S. Postal Service. Similar patterns hold for all case filings.

We chose securities frauds and violations of the 1934 Securities Act because we wished to represent an agency that had a relatively small volume of referrals and where the total number of violations of a kind also is small. Only a few agencies refer securities frauds and matters relating to the 1934 Securities Act. The bulk of these matters originate with the SEC, though it is a somewhat smaller

TABLE 4.5

AGENCY SOURCE OF REFERRAL FOR FOOD STAMP PROGRAM REFERRALS
TO U.S. ATTORNEYS FOR 1975 AND THEIR CASE FILINGS

Agency Source of Referral for Food Stamp Program Referrals to U.S. Attorneys in 1975 and their Case Filings				
Referring Agency	Matters Referred		Cases Filed	
	Number	Percent	Number	Percent
U.S.D.A. Commodity Credit Corp. Market & Consumer Serv. All Other Agriculture	1 46 384	0 10.2 85.3	... 28 122	..... 17.4 75.8
U.S. Dept. of Commerce FDA All Other Justice	5 1	1.1 0	1 ...	0
Postal Service Postal Service	3	0	2	1.1
Independent Agency DC Police Dept.	7	1.6	7	4.4
Total	450	100.0	161	100.0
All 'Other Agr' Referrals	587		217	
Pct. Food Stamp of Other Agr		65.4		56.2

TABLE 4.6

AGENCY SOURCE OF REFERRAL FOR MAIL AND WIRE FRAUD MATTERS REFERRED
TO U.S. ATTORNEYS IN 1975 AND THEIR CASE FILINGS

Referring Agency	Matters Referred		Cases Filed	
	Number	Percent	Number	Percent
Health, Education, Welfare Social Security Adm.	1	•	.....	.....
U.S. Dept. of Justice Drug Enforcement Adm.	1	•	.....	.....
FBI	422	29.3	214	27.6
Internal Revenue Serv.	1	•	.....	.....
All Other Justice	15	1.0	3	•
Postal Service				
Postal Service	959	66.6	532	69.1
U.S. Treasury				
Comptroller of Currency	1	•	.....	.....
Other Internal Revenue	1	•	.....	.....
Secret Service	3	•	1	•
All Other Treasury	2	•		
Independent Agencies				
SEC	13	0.8	2	•
DC Police Dept.	19	1.3	17	2.2
All Other DC	1	•	.....	.....
Total	1,439	100.0	770	100.0
All Postal Service	7,518		4,714	
Pct. Mail Fraud Postal of All Postal Service		12.8		11.3

• 0.5 percent or less

TABLE 4.7

AGENCY SOURCE OF REFERRAL FOR SECURITIES FRAUDS AND VIOLATIONS
OF THE 1934 SECURITIES ACT TO U.S. ATTORNEYS IN 1975
AND THEIR CASE FILINGS ON THESE MATTERS

Referring Agency	Matters Referred		Case Filed	
	Number	Percent	Number	Percent
U.S. Dept. of Justice	7	16.3	5	15.1
FBI	1	2.3	1	3.0
Secret Service				
U.S. Postal Service	3	7.0	4	12.1
Postal Service				
Independent Agency	35	81.4	23	69.7
SEC				
Total	43		33	
All SEC Referrals	87		54	
Pct. Securities Cases of All SEC Referrals		40.2		42.6

proportion for case filings. Although SEC contributes the bulk of these matters and is a small source of referral to the U.S. Attorneys, nonetheless these major securities cases contribute less than half of all SEC referrals. It may be somewhat surprising to readers to learn that 10 percent of all SEC matters referred to U.S. Attorneys were for contempt, 17 percent for conspiracy, and 7 percent for anti-racketeering. Only a little over 40 percent are securities matters per se. The remaining referrals are for violation categories such as bail, aiding and abetting, labor laws, perjury, and even an instance of "other stolen property."

Although it would seem to be quite possible to report employee violations in terms of a standard classification of white-collar law violations, examination of Inspector General reports that include information on employee violations indicate that little attempt is made to tabulate employee violations in terms of types of violations, much less according to a standard classification. The Department of Health, Education, and Welfare merely reports the number of employees convicted in 1977 and 1978 (HEW, IG, 1979:50) and the number of employees under investigation by the Office of Investigation (HEW, IG, 1979:56). The Inspector General's report for Housing and Urban Affairs uses a few categories of violation that refer specifically to employees, such as employee misconduct (111 investigated cases) and HUD employee complaints of discrimination (45 cases investigated) (1979:52). Table 8 of the Inspector General's report also provides information on employee positions for those indicted and sentenced, but no information on violation status. The Department of Labor refers to "Employee Integrity" complaints and cases (DOL, IG, 1979:40,48). The Department of Interior Inspector General provides a summary of Whistle Blower or Hotline complaints from employees of the Department, but the classification is not clearly developed, since some other forms of violation are included as well, such as "safety hazard." The categories used by Interior for reporting these violations is seen in Exhibit I of its Report (1979). (See Table 4.8.)

The Internal Revenue Service (IRS) has reported information on personnel and other internal security violations since 1952. For the most part they have retained the same reporting categories relating to "separation of employee by type of offense." We compiled a time series for the number of separations for cause by type of offense for the period 1953-1976 (See Table 4.9). To our knowledge, IRS is the only agency that has reported such information on employee violations over a fairly long period of time. Indeed, most agencies seem to have paid only cursory attention to employee misconduct or violations of law. As we noted earlier, some independent agencies still have no internal capability to detect and report employee violations

TABLE 4.8
SUMMARY OF WHISTLE BLOWER COMPLAINTS
FOR THE PERIOD APRIL 1 TO SEPTEMBER 30, 1979

COMPLAINT CATEGORIES	NUMBER OF COMPLAINTS OR ALLEGATIONS
Bribery	....
Conflict of Interest	9
Fraud	43
Waste	63
Abuse of Authority	15
Mismanagement	92
Safety Hazard	7
Threats	1
Misconduct	17
Prohibited Personnel Practices	11
Program Abuse	14
Discrimination	11
Administrative Irregularities	145
Theft of Government Property	4
Miscellaneous	14
TOTAL	4461

¹The 446 allegations resulted in establishing 349 cases because more than one allegation may be included in a case.

TABLE 4.9: Separations by Type of Offense in Actions by Management Officials on Personnel Investigations by the Internal Security Division* of the Internal Revenue Service: 1952-1974**

SEPARATIONS FOR CAUSE BY REASON	YEAR																										
	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978
Bribery, Extortion, or Collusion	27	16	11	12	7	5	1	5	3	7	5	16	40	62	27	7	25	6	12	8	2	1	2	5	5	5	5
Embezzlement or Theft of Funds or Property 1/	24	6	15	5	8	13	9	21	19	21	15	17	15	15	11	5	7	6	6	2	4	7	3	4	4	4	4
Failure of Employees to Pay Proper Tax	21	27	45	20	26	34	14	13	15	14	15	17	54	21	20	17	9	5	8	6	9	26	44	73	73	73	73
Falsification or Distortion of Reports, Records, etc. 2/	5	41	53	145	145	101	83	50	79	103	69	89	121	150	94	50	89	61	91	91	101	91	117	123	123	123	123
Unauthorized Outside Activity	15	12	9	5	12	13	14	5	10	12	8	11	9	10	8	8	5	3	6	2	9	5	3	2	2	2	2
Unauthorized Discharge (Unauthorized)	7	8	6	4	9	13	13	10	11	7	14	9	2	11	5	11	9	3	6	6	7	10	10	10	10	10	10
Unauthorized Disclosure of Confidential Information	(-)	1	2	1	6	4	5	5	2	4	2	1	1	5	0	2	5	1	3	0	3	4	2	4	4	4	4
Acceptance of Fees and Gratuities 3/	53	(-)	20	6	13	5	7	3	17	6	4	5	7	8	22	12	2	0	0	1	1	2	2	2	2	2	2
Unauthorized Separation from Official Position	2	—	—	2	1	4	3	1	(-)	1	(-)	13	3	2	2	0	0	—	—	—	0	3	1	1	1	1	1
Personal and Other Misconduct 4/	45	39	34	38	50	64	88	68	69	53	83	95	59	78	55	65	44	47	31	106	75	86	124	53	53	53	53
Failure to File Financial Statement	2	8	2	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Other 5/	—	9	12	25	31	95	23	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
TOTAL SEPARATIONS 6/	174	152	207	236	308	355	260	189	225	228	215	271	271	340	239	225	195	132	161	227	231	235	331	274	274	274	274

NOTES:

- 1/ In 1955, this category was designated "Embezzlement or Theft of Government funds or property."
- 2/ In 1955, this category was designated "Falsification or distortion of Government reports, records, etc."
- 3/ In 1959, this category was designated "Personal misconduct unrelated to tax cases."
- 4/ This category was included under the caption "Acceptance of gratuities, bribes, etc." in the 1953 Report.
- 5/ In later resignations, retirements, or other separations while employees were under investigation or before an administrative decision was made on disciplinary action where investigation disclosed derogatory information.
- 6/ Cases reported:
- Category not reported.
- 7/ This category was combined with "Acceptance of fees and gratuities" in 1952 only.
- 8/ Since 1972, IRS has had an Internal Security Division.
- 9/ Source: Commissioner of Internal Revenue, Annual Report (1952 to 1978 inclusive).

of law. Table 4.10 provides additional information on type of employee investigations and also information on other kinds of "internal security" investigations.

We would conclude then that at the present time it is not possible to compile information on employee violations of law for a substantial number of federal departments and agencies and to classify them by a standard set of white-collar violation categories. The absence of a possibility to develop cross-sectional information precludes the development of any time series.

What is less clear is whether very many agencies are beginning to develop classifications for employee violations given the inauguration of Inspector General offices in the civil executive departments and the increased attention to these matters in some independent agencies. Legal categories of violation are not very satisfactory for classifying employee delicts in a way that provides information on the ways employees commit white-collar violations of law. This should be apparent in examining the classifications used by the Department of Interior and by IRS.

One must also be sensitive to the ways that external or statutory criteria affect a particular classification and its measures of the kind and amount of white-collar law violation. One measure that may not be susceptible to cross agency aggregation because of statutory definitions is a measure of the amount of monetary loss due to the commission of an offense. Such measures depend upon what one can "legitimately" or legally claim as property that is lost. It is interesting to see how legal definitions of legitimacy of ownership of property are related to measures of monetary claims of property loss. "Illegal" and "legal" gain from property can be treated as a "legitimate loss" only under legal rules of what can be regarded as legal property or legal claim to illegal gain. This is particularly evident in the matter of government revenue offenses. In the case of Customs revenue, for example, the Government can lay claim to "lost revenue" due to violations of law only if the source of violation is a legitimate activity carried out in an illegitimate way. If one evades paying revenue on a legitimate shipment of goods, it will be treated as "lost revenue." If illegal drugs are being imported, however, duty (revenue) could not legally be assessed on those drugs. By this token thus no revenue can be thought of as "lost." Correspondingly, if the illegitimate gain from the illegitimate importation of drugs is not reported as income, a violation of law is committed and the tax revenue expected from such illegitimate sources is counted as "lost revenue." Under the Internal Revenue Code, by contrast, there is an affirmative responsibility to report illegitimate income, e.g., from gambling, organized criminal activity. Income

TABLE A.13: Percent Distribution of Type of Investigations or Actions by the Internal Security Division*
of the Internal Revenue Service 1953-1974**

TYPES OF INVESTIGATIONS AND ACTIONS	YEAR																							
	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976
NUMBER OF TOTAL INVESTIGATIONS							11473	10355	7288	8956	10011	8221	8325	9664	12373	12081	8950	10187	14263	13848	19654	21322	18263	17774
Personnel Investigations			4463	7063	7512	6007	8136	4973	6032	7701	8626	6928	6162	7340	10027	9920	6806	7863	11650	10697	13193	13921	14222	14444
Other Investigations							3337	5382	1256	1255	1385	1293	2163	2324	2346	2161	2144	2324	2613	3171	6461	7401	4041	3330
PERCENT OF TOTAL INVESTIGATIONS							100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Personnel Investigations							36	48	83	86	86	84	70	74	81	82	76	78	81	77	77	64	81	80
Other Investigations							61	52	17	14	14	16	30	26	19	18	24	22	19	23	23	16	19	20
PERCENT OF PERSONNEL INVESTIGATIONS																								
Character and Security			67	69	66	66	66	64	65	65	58	48	43	47	55	61	64	71	77	74	77	77	75	75
Conduct			19	14	18	10	15	10	9	9	9	10	12	11	6	5	7	5	4	6	7	8	7	7
Sexual Inquiries ^{1/}			14	17	26	24	25	26	26	26	33	42	45	42	39	34	29	24	19	20	16	15	17	18
PERCENT OF OTHER INVESTIGATIONS BY TYPE							100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Assault ^{2/}																			27	1	9	14	15	22
Discipline																			0	0	1	3	5	9
Applications to Practice before IRS ^{3/}							98	97	86	52	46	29	25	28	39	35	35	32	34	37	28	35	42	40
Against Attorneys, CPA's, and Enrolled Agents ^{4/}							1	1	2	0	9	9	5	4	5	5	3	5	2	2	2	2	2	7
Federal Tort Claims							2	2	11	12	12	10	8	3	6	8	8	8	8	6	3	4	4	5
Bribery ^{5/}									2	1	3	4	3	3	4	4	5	4	5	4	4	6	6	2
Investigations from other Federal Bureau										27	30	30	59	56	47	50	49	51	51	50	53	35	23	10
Investigation									1	0	0	0						0	0	0	0	0		

FOOTNOTES:

^{1/} Designated "Other Investigations" in 1955 Fiscal Year Report. Special inquiries include principally National Agency and Industry and "Complaint" type investigations.

^{2/} Effective January 1, 1960, the investigative functions of the enrollment program were transferred from Intelligence to Inspection. The figures shown for 1959 consist exclusively of investigations made by Intelligence while the 1960 figures include investigations by both branches of the Service.

^{3/} Up to 1972, this category was designated "Attempted Bribery."

^{4/} Designated "Assault on service personnel" in 1972 report only.

^{5/} Category not reported in previous years.

^{6/} Data not compiled in report for F.Y. 1971.

* Since 1952, IRS has had an Internal Security Division.

** Source: Commissioner of Internal Revenue, Annual Report (1953 to 1976 inclusive).

must be reported without respect for the legitimacy of its source. Thus, Subtitle A, Section 61 states: "Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:" The operable phrase, "from whatever source derived" makes it "loss revenue" to fail to report income from illegal sources. IRS, in contrast to Customs, will estimate revenue losses from both legal and illegal sources of income (IRS, 1979).

Assessing the Accuracy of Statistical Information

The accuracy of statistical information collated from different sources depends in the first instance upon the accuracy of information in each information system. We have emphasized repeatedly that agencies which develop information relevant to white-collar law violations pay very little attention to determining the accuracy of information in their files. The lack of completeness of information and the indeterminacy in what constitutes the number of cases in an information system have just been examined as sources of inaccuracy that affect time series for many agencies. Lacking any measures that might permit inaccuracy due to incompleteness to be taken into account, we cannot assess its impact on any collated statistical series. Nonetheless, we have shown that the problem is not insignificant.

Quite obviously attention must be given to the accuracy or reliability of any information that is to be used in testing theories or developing social indicators of white-collar violations of law. In addition to assessing the completeness of information in a statistical system, some of the other problems of accuracy that must be addressed are these: how accurate is the information on each information bit in a system? Do information systems vary in the kind and amount of inaccuracy in the information they produce and what characteristics of the agency or of its information system affect the accuracy of information and its statistical reporting? What kinds of inconsistencies typically occur in information items? Are there means of assessing the accuracy of information both internal to and independent of the agency producing it? What are the possibilities for separating error in producing information from deliberate distortion and bias in the information? And finally, what kinds of inaccuracy characterize time series data for an agency reporting time series? Some attention is given to each of these questions in what follows.

Coding Information and the Accuracy of Information. Most agencies make no effort to determine the reliability of their coding of information. It is a relatively simple matter to assess coding reliability since samples of information or cases can be drawn and tests of coding

accuracy of conducted. Other measures of the accuracy of information, such as the consistency of the same or related information, from the same and different sources also need to be investigated. Again in case samples one can compare the accuracy of information with original source documents or with independent sources. Inconsistency in results from two or more variables may provide evidence of inconsistency in information from the same or different sources. These kinds of tests should be undertaken for every major statistical source of relevance to statistics on white-collar law violations.

That these problems arise in information systems on white-collar delicts is quite apparent by reports from individual investigators using the information systems. Unfortunately, there is for the most part a bias in their choice of variables for examination. We know more about inconsistencies and errors in information about individuals than in information about organizations. A higher priority should be given to learning more about inaccuracy in organizational information, whether of IRS measurements of inaccuracy showing a preference for individual as compared with corporate returns or for information from the U.S. Attorney's file, or that of the Administrative Office of the U.S. Courts.

Weisburd's report (1979) on the file of the Administrative Office notes that it was not always possible to identify corporations and other organizations in the file. Usually there was a sub-category for items that identified individuals--such as their race, age, or sex--that identified the item as irrelevant because the unit was an organization rather than an individual. However, there was inconsistency in identifying organizations on these variables. Moreover, such items ordinarily had a high proportion of missing information so that it was not possible to determine which were individuals and which organizations. (Our previous estimates of missing information for individuals in that file are based solely on those cases where individual status had been identified by an independent means.)

The Administrative Office file provides examples of inconsistencies in information from two variables where coding of the same information should be consistent. When Weisburd was attempting to create a sentencing scale, two of the variables he selected from the Administrative Office's code were "Type of Sentence" and "Prison Term (in months)." The "Type of Sentence" code included subcategories of four different lengths of prison terms as well as of types of probation and fines. Prison Terms was coded in months, permitting a comparison between this variable and the subcategories on the "Type of Sentence" variable. What he found was that there was high consistency between the prison

terms in months and the four subcategories on length of sentence, maybe owing to cross-checking in the programmed checks of reliability. But there was much inconsistency between the prison terms subcategories and those for fines and probation. Prison terms were reported for 16 percent of cases coded "Probation, direct from Court and Supervised" and in 13 percent of the cases coded "A Fine was Imposed and Remains to be Paid." There was an interesting pattern for a sizeable proportion of the probation cases and all of the fine cases in their being coded as receiving a prison term of 13 months. This pattern may simply reflect that 13 months is the most common felony sentence so that these results might be expected on that basis. Some attempt is being made by the Administrative Office to determine whether these are actual inconsistencies or result from particular decision rules and their timing.

Such inconsistencies unfortunately do not permit one to determine which of the results is in error unless there is some means for resolving the inconsistency with a measure of error. An example of being able to determine the amount of error is provided in the Administrative Office files where violations are coded in two different ways. The termination level of the offense was coded as "felony," "misdemeanor," "other minor," or "petty." Any specific offense should be coded by rule in a given major category and consistently so. Yet errors can be substantial for some subcategories. One-sixth of the cases coded as "other tax misdemeanor" were included in the "felony" category, for example, and 8 percent of the "other tax felony" were listed as "other minor offenses." There also were cases reported as missing on one variable that were coded on another where inaccuracy cannot be treated as error in coding. One-seventh of the "other tax misdemeanor" cases, for example, were not coded on the "Termination Level of the Offense" variable and 17 percent of the "other tax felony" were similarly missing.

A recent GAO (1979) report on radiation control programs found that state statistics for x-ray sources were sometimes not reported on a consistent basis. A state, for example, might report registrations in number of tubes registered and inspections in number of machines inspected or in number of facilities inspected. Some machines have more than one tube. Although FDA has conversion ratios from machines to tubes for dental and medical machines, such ratios would be unnecessary were a consistent basis for reporting adopted (1979:12).

We have noted that the level of inaccuracy of an agency's data can be checked for coding accuracy using sample checks of reliability in coding information. It also is possible under some circumstances to provide for checks against independent sources. Indeed, unless one can test the accuracy of the information against an independent

source or test the hypotheses based on agency data with information from an independent source, one runs the risk that inaccuracies due to error or bias may coerce the conclusions.

We found only two agencies that systematically provide for some independent assessment of the information they produce in their system, excluding those instances where audits are used as a means to detect violations, such as in independent IRS and SEC audits and in HEW and other Inspector General audits. One of these is the Consumer Product Safety Commission which uses independent data sources to check the accuracy of information in the NEISS system and to supplement NEISS information on how product injuries occur. Death certificates and information on product related deaths from the Medical Examiner's and Coroner's Alert Program (MECAP) are the major independent sources used by CPSC, though the CPSC Hotline also serves as an independent source. The other example is some phases of TCMP of IRS where the accuracy of reporting on individual tax returns is checked against independent sources (Long, 1980). TCMP sample survey audits also provide a basis for estimating income that is derived from legal sources but not reported for tax purposes (IRS, 1979).

Where there are published sources that report independently on the same cases, it is possible to check the accuracy of their reporting by assessing their aggregate agreement. The comparison in Table 4.11 from published reports by the Administrative Office of the U.S. Courts and by the U.S. Attorneys on cases filed may serve as an example. Though the discrepancies are not large, they exist.

Long (1980) similarly has made comparisons between data on filings and their dispositions using the U.S. Attorney's file of referrals for criminal prosecution from IRS and IRS reports of the dispositions of matters and defendants for the same period. Substantial discrepancies are found for the two files (1980:Table 6.5). It is impossible to pinpoint the source of these substantial aggregate differences in matters referred for criminal prosecution between the two files or on their disposition of these cases. As Long notes, some probably reflect differences in how the two agencies count "defendants" and "matters" referred for investigation.

The U.S. Attorney's file also uses a pre-1952 code for IRS (Income Tax Unit, Alcohol Tax Unit, and Other Tax Unit) which may affect classification and counting. Moreover, although Alcohol, Tobacco and Firearms was transferred out of IRS in 1972 to become a separate bureau within Treasury, there is no separate source code for it in the U.S. Attorney's file. Using our 1975 data, Long found that

TABLE 4.11

CRIMINAL CASES FILED AND DEFENDANTS IN UNITED STATES DISTRICT COURTS BY
NATURE OF OFFENSE FOR FISCAL YEAR 1977: SELECTED OFFENSES TOTALS COMPARED
FOR U.S. ATTORNEY'S AND ADMINISTRATIVE OFFICE OF U.S. COURTS FILES

Annual Report	Type of Offense					
	Income Tax			Liquor, Internal Revenue		
	Cases Filed	Defendants		Cases Filed	Defendants	
		Guilty	Dismissed		Guilty	Dismissed
U.S. Attorney's Offices	1,486	1,387	191	118	147	23
Administrative Office, U.S. Courts	1,466	1,252	145	118	131	16

SOURCES: 1977 Annual Report of the Director. Administrative Office of the United States Courts, Tables D2FMC and D4FMD; Statistical Report of the United States Attorney's Offices. Fiscal Year 1977, Table 4. United States Department of Justice.

most alcohol and weapons offenses referred to U.S. Attorneys appear to be coded under "Alcohol Tax Unit" but the "Other Tax Unit" also has weapons offenses as its second most frequent offense. IRS no longer had any enforcement responsibilities for any of these matters in 1975, representing a confusion of their coding by using the Agency Source and categorization of matters in the current U.S. Attorney's file.

What Long demonstrates is that the discrepancies in statistics on prosecution of criminal matters between the two systems make a real difference in the conclusions one might reach. She reports that IRS information on cases referred to U.S. Attorneys for criminal prosecution have an indictment or information filed rate of 86 to 87 percent (Long, 1980). U.S. Attorney's, in short, declined prosecution in 13 to 14 percent of the matters referred by IRS. This has been a fairly constant rate of refusal judging from IRS reports for the past four years (Long, 1980). Using our special tabulations from the U.S. Attorney's Docket and Reporting System, the indictment rate was considerably lower--77 percent of matters referred--and the refusal rate accordingly almost twice that reported by IRS (Long, 1980). Whether this is due to the fact that the U.S. Attorney's show a larger number of cases filed is not clear. Earlier we pointed out that tax matters are referred from other agencies; some of the discrepancy could be due to misclassification of cases from these other agency sources.

That these discrepancies exist for more than referrals for criminal prosecution and their disposition is evident in other ways in Long's comparisons of information from independent sources. She also shows, for example, that while IRS reports 44 percent of all criminal tax sentences involve prison terms, the proportion reported by the Administrative Office of the U.S. Courts--the agency responsible for sentencing--is less than one-third with prison terms. Again this could be due in part to the fact that tax referrals for criminal prosecution are made from agency sources other than IRS--as we noted earlier--but the magnitude of these referrals seems insufficient to account for the discrepancy.

Long's analysis of the accuracy of information on many of the same cases from these different agencies calls attention to how inaccuracies limit opportunities for synthetic cohort analyses. Ideally, for an agency like the IRS that refers matters for criminal prosecution and adjudication, we would like to begin with a cohort of cases as they originate in various divisions of IRS, follow them through their referral to the Criminal Division of IRS and screening by its District Counsel for referral to the Tax Division of the U.S. Department of Justice or/and the

U.S. Attorneys, and to filing and disposition in the U.S. Courts or/and any subsequent legal process, including whether or not civil actions are brought in any of these matters. That ideal cannot be reached in practice because of the loose organization of network for processing legal matters in the United States, including criminal matters.

An alternative is to create a synthetic cohort of cases for one of the originating points and follow them as an aggregate through these levels of transaction in the legal system network. But the creation of a synthetic network rests on two presumptions: (1) that the reduction in case output at each point in the system is an accurate representation of dispositions; (2) that the form of disposition is accurate. Each of these has an important effect on output dispositions at each stage and inputs to the next stage. If for any reasons inaccuracies markedly affect these assumptions, a synthetic cohort analysis is untenable. This seems to be the case for criminal matters, at least for the stages for which matters are referred for criminal prosecution, if Long's analysis of the IRS referrals is a reasonable model for other kinds of referrals (Long, 1980).

While, as a rule, discrepancies among independent sources of information on the same or similar matters are helpful in learning more about the inaccuracies in each data file, the differences may be so substantial that they render comparability almost out of the question. A good example is provided by a GAO inquiry into the way NRC, OSHA, and FDA carry out their respective responsibilities for the control of radiation sources in the United States (1979:5-11). The GAO sought to determine how inspections were made and violations detected and dealt with in the respective systems, assuming there are ways in which they might be compared. What it discovered was enormous differences in numbers of inspections made and in citation for violations. The NRC, for example, made 2,411 inspections in 1978 and found violations in about 40 percent of these inspections. OSHA, which has responsibility for ionizing and nonionizing radiation in job situations has made over 1 million workplace inspections since 1970. Although OSHA cannot determine what proportion of these workplace inspections involved potential radiation hazards, it reported only five establishments were either cited for radiation violations or sampled for radiation hazards in 1978. FDA has responsibility for pharmaceuticals and medical devices containing radioactive materials. During 1978, FDA and 22 States under contract to them made 3,152 field tests of new diagnostic x-ray systems and found 1,918 (or 61 percent) were not in compliance with FDA's standards, 1,119 (or 36 percent) had other major violations and 32 (or 1 percent) had violations warranting they cease operations. Clearly with such differences in selection for inspection, in bases,

in detection of violations, and in standards for defining them, it would be difficult to assume one might develop some indicator of organizational violation of radiation laws and standards. In such circumstances, it appears difficult to separate how much effect seeming inaccuracies of the procedure as compared with differences in agency enforcement have upon the reporting of violations. But quite clearly, one would conclude that the statistics on radiation violation could not be collated from these several sources.

The agency production of a critical statistical indicator may be open to bias when its development depends upon self-reports of potential violation as well as upon the reports of observers. Where those self-reports may be perceived as open to prosecution for negligence, they may bias the production of indicators. Shapley (1979:387-88) provides an interesting example of this possibility in her examination of how two different agencies estimate "near crashes of airplanes" or "near midair collisions" (NMAC's). She reports that a recent NASA study concludes that such NMAC's may be 12 times more frequent than the FAA reports (1979:387). The problem, as Shapley notes, depends upon which agencies' estimate is perceived as the more accurate one of risk. FAA argued that the NASA data are of poor quality because names of persons reporting near crashes are kept confidential so that individual incidents cannot be investigated as to their validity; as a result, they argue, there is multiple reporting of the same incident. NASA counters with an estimate that no more than 11 percent of its estimate of near midair collisions could be due to multiple reports of a single incident. None of the error sources in fact seems to explain a discrepancy of this magnitude. Rather, as Shapley reports:

"Many people believe that FAA receives relatively few reports of dangerous air situations because those reporting fear prosecution for negligence. For this reason, the Aviation Safety Reporting System was created at the NASA Ames Research Center in California. Under the system, anyone--pilots, crew, or ground controllers--can file a form reporting a dangerous occurrence and in so doing relieve themselves of liability. The researchers at NASA think this is the reason it receives so many more reports than FAA. For example, the NASA file shows 1,852 reports of NMAC's from July, 1976 through November, 1978 whereas FAA data show only 484 NMAC's for the year 1978." (1979:388).

Quite clearly the production of any statistical series is open to such forms of bias, particularly where the determination of a violation depends upon self-reports that themselves may be open to under-reporting from fear of liability as well as other forms of over- or under-reporting.

Effects of Barriers to Collation on Time Series. Though all of the structural and procedural barriers that affect the collation of information from diverse sources have by no means been explored, it should be apparent that these barriers can be quite serious matters in deriving any cross-sectional statistic by collating information from different collection sources. What affects cross-sectional estimates must be consequential also for time series. Though this should be obvious by inference, it may be helpful to show these consequences for time series for some of the barriers we have discussed.

Changes in Classification, Their Definition and Their Accuracy. Any change in a classification system or in the definition of any class within a system of classification poses problems of how to take these changes into account in a time series. Shall one try to reclassify matters for previous reporting so that they are consistent with new ones? Shall one simply demonstrate their likely effect on past reports? Shall one maintain series based on "old" and "new" definitions for some tense into the future? Or what? What is to be included and excluded from a class or set of classes likewise affects the nature of the time series which correlatively affects inferences based on the time series. Where there is substantial inaccuracy in classifying matters into a classification system, moreover, any changes observed over time for these classes may simply reflect inaccuracy in classification.

Serious as the effect of inaccuracy may be in cross-sectional use, the effects on difference or change measures can be an even greater source of error in time series, if for no other reason than that compensating errors mask changes. All of these problems and more related to classification and its accuracy can be illustrated in examining time series for a single agency. We unfortunately cannot illustrate how such errors are compounded in merging the statistics for a number of agencies since the kind of information essential to examining those effects is lacking in our survey.

Information on sources of complaint often is lacking for an agency. One reason for this lack is that agencies often do not have a clear definition of a "complaint" or a "matter for investigation" until it is defined as a "matter," "complaint" or "investigation." One can define such categories in terms of "residual" or "originating" bits or pieces of information that require attention or upon decisions, or one can have more formal classifications based on administrative standards or the law. Whatever their source, what enters as information that has to be classified can change considerably over time, either because of changes in law or administrative policy or because of changes in the external environment that bring matters to the attention of

agencies in the form of "complaints." For statistical accounting purposes, unless the information system has a way of taking these changes into account, what enters into a statistical class may change considerably over time but its compositional change go unreflected in the information system and, therefore, its implications for a time series go undocumented or unaccounted.

A good illustration is available in the statistics on FTC case processing, particularly in its statistics on applications for complaint. A time series of applications for complaint is provided in Table 4.12 (Bruce, 1978: Table 4; Berney, 1979: Table 5.9).

Examination of Table 4.12 discloses rather substantial increase in the 1970's in total applications and also for antimonopoly and deceptive practices applications. How to interpret these substantial changes is partially (but only partially) resolved if one learns that beginning in 1972, all oral as well as written applications for complaints are included in applications for complaints. Thus, Berney (1979) discovered that in the 1972 Appendix to the U.S. Budget, FTC began reporting the breakdown of applications into "written complaints" and "oral complaints" in total applications for complaints as the following breakdown in the Appendix shows (Berney, 1979: Table 5.10).

TABLE 4.13

Year	Public Complaints (Written)	Total Applications for Complaints
1972	45,195	73,663
1973	35,013	77,429

From this reported tabulation, it seems apparent that the statistics on applications for complaint prior to 1972 appear to include "written applications" only, even though they were not labeled in this manner in the annual reports prior to 1972 or subsequently (except in their breakdown in the budget appendix). One reason why this confusion may have occurred in the series is that the FTC defines an application for complaint as a "written application," even though in recent years it has taken to counting "all complaints." The figures after 1971 thus include "Total Complaints" rather than written applications only. One

TABLE 4.12
APPLICATIONS FOR COMPLAINTS RECEIVED
BY THE FEDERAL TRADE COMMISSION, 1951-1974.

Year	Antimonopoly Applications	Deceptive Practices Applications	Total Applications
1951	700	2524	3224
1952			
1953	704	2796	3500
1954		2631	
1955	537	1976	2513
1956	590	2221	2972
1957	822	2861	3683
1958	814	2968	3782
1959	884	3516	5210
1960	1042	4888	5930
1961	1159	3727	4886
1962	1451	5519	6970
1963	1309	4562	5871
1964	1366	4523	5889
1965	1286	4408	5694
1966	1450	6399	7849
1967	1695	7307	9002
1968	1372	7321	8693
1969	1775	10099	11927
1970	1626	23302	24928
1971	3954	36994	40949
1972	4374	69289	73663
1973	3733	73696	77429
1974	4586	73093	77679

Source: Stephen Bruce, "Report on Enforcement Activities of the Federal Trade Commission," (unpublished paper, Committee on Legal Indicators of the Center for Coordination of Research on Social Indicators, Social Science Research Council, 1978), Table 4.

would need to secure separate tabulations on "written applications" to construct a time series based on the uniform definition of "written application."

What may seem surprising is that the FTC fails to note such changes in reporting. Perhaps this will not seem too surprising in the context of an understanding of how our current systems organize accountability by annual statistical reporting. The principal focus in annual reporting is the statistics for a given year. When comparisons are made with statistics for any previous years, they ordinarily are selective comparisons. While one may ordinarily assume that these selected comparisons are for comparable units and bases, the selective nature of the comparison and the emphasis on annual reporting leads to an institutional blindness to how annual reporting may bias time series reporting. The FTC statistical time series assembled by Bruce (1978) and by Berney (1979) are constructed from annual reports or from agency statistics gathered for annual reports. In the same way our time series for other agencies are assembled from annual reports.

Annual reporting conduces inattention to how annual changes in classification and its accuracy affect time series. Often one can learn of consequential changes in classification from their recording in annual reports, particularly where the changes were germane to a selective comparison in an annual report or to particular over time comparisons. Ordinarily such changes are recorded in the report for only a few years or for a comparison of a previous with a current reporting year. These reports of changes unfortunately are dropped in later reports where the years are included as part of a long term series.

There are some other unintended consequences of how we come to detect inaccuracies or unwarranted comparisons in statistical time series constructed by annual or periodic reporting. There is a systematic biasing of the "inaccurate statistic" by using different means of detecting discrepancies to signal inaccuracy in a time series. One ordinarily locates inaccuracy when the agency calls attention to the effect of any such change in an annual report or when one "spots" "discrepancies" or "unexplained changes" in the time series--all of which "perceptions" are subjective judgements about matters being contrary to "expectations" about change. Since one does not ask such questions when the statistics conform to expectations, one may systematically bias locating inaccuracies to those instances where their effects are visible in time series by "inspection." When they are not, as when statistics conform to expectation, it is reasonable to assume inaccuracy also exists, but its effects will not be assessed.

Problems in inaccuracy of computer generated data because of changes and ambiguity in collection of, or in computer generated categories of, information are of concern not only to interpret time series but also because of their disutility as legal evidence. Lange and Bowers (1979:92) report that interviews with Federal prosecutors disclose that the prosecutors were discouraged by the ambiguous and unevaluated accuracy of information that HEW investigators supplied them as evidence for prosecution in program fraud cases. One prosecutor, in particular, emphasized the computer generated categories were inadequate but attributed it to the looseness of the program regulations on which computer generated categories are based. On account of this, Lange and Bowers conclude: "Taken as a whole, this research strongly suggests that a lack of reliable data has substantially hampered benefit enforcement." (1979:92).

Seeming identities in classifications from the same data sources may be superficial. In constructing time series from agency reports, one finds that different investigators may choose different operational definitions for the "same" class. The choice of each definition has important effects on trends in the time series, however. This possibility gives rise not only to misperceptions about what a given series may mean, given the labels attached to categories, but opens any set of data to selective use to "demonstrate" whatever time series state one intends.

Just how two different definitions of the "same" matters from the same agency, FTC, can affect a time series is demonstrated by comparing the time series on complaints issued in restraint of trade using FTC annual reports, Table 4.14 (Bruce, 1978:Tables 9, 10; Berney, 1979:Tables 5.17, 5.18) with Posner's constructed time series on complaints issued in restraint of trade which presumably included the same cases, except that Posner classified each case and excluded all Robinson-Pattman cases other than those alleging price discrimination (Posner, 1970:379, 408; Berney, 1979:Tables 5.19, 5.20). Using the FTC data on antimonopoly cases in Table 4.14, one notes a somewhat erratic or fluctuating pattern of decline in antimonopoly cases beginning in the early sixties and continuing to the late sixties.

The pattern and extent of decline is rather different for the antimonopoly cases as defined by Posner. Moreover, a comparison of Table 4.14, where Bruce excluded Robinson-Pattman cases, with Table 4.15, where they are tabulated separately, with Posner's data excluding most Robinson-Pattman cases suggests that there are other differences in counts as well. This may derive from the fact that Posner's classification is based on reclassification of individual cases, the FTC docket of complaints and FTC decisions on cases rather than FTC's classification of its cases for its

TABLE 4.14
COMPLAINTS ISSUED
BY THE FEDERAL TRADE COMMISSION, 1954-1976

Year	Total Complaints Issued	Antimonopoly Complaints	Antimonopoly Complaints, Excluding Robinson- Patman	Deceptive Practices Complaints	Deceptive Practices Complaints, Excluding Textile, Wool, Fur and Flammable Fabrics	Tex- tile, Wool, Fur, and Flam- mable Fabrics
	1944-53 average: 111.7	1944-53 average: 28		1944-53 average: 83.7		
1954	122	30		93		
1955	161	36	17	125	85	40
1956	192	42	15	150	108	42
1957	242	55	17	187	116	71
1958	354	86	22	268	157	111
1959	352	80	14	271	144	127
1960	503	157	27	346	267	79
1961	412	121	21	292	177	115
1962	232	49	8	184	93	91
1963	431	230	11	201	127	74
1964	309	95	12	214	129	85
1965	161	26		135	66	69
1966	194	94	22	100	48	52
1967	221	24	17	197	108	89
1968	123	16		107	45	62
1969	220	28		192	65	127
1970	241	24	13	217	75	140
1971	241	33	23	208	61	147
1972	314	34	29	280	198	83
1973	227	31		196	102	94
1974	133	28		105	75	30
1975	227	25		202	192	10
1976	182	37		145	129	16

Source: Stephen Bruce, "Report on Enforcement Activities of the Federal Trade Commission," (unpublished paper, Committee on Legal Indicators of the Center for Coordination of Research on Social Indicators, Social Science Research Council, 1978), Table 9.

TABLE 1.15

COMPLAINTS ISSUED--UNDER SELECTED STATUTES
BY THE FEDERAL TRADE COMMISSION, 1950-1976

Year	Antimonopoly Statutes		New Deceptive Practice Statutes		Textiles, Wool, Fur and Flammable Fabrics Statutes				
	Robinson-Patman	Merger	Fair Packaging	Truth-in Lending	Textile, Fur, Wool, Flammable Fabrics	Textile	Fur	Wool	Flammable Fabrics
1950	19	0							
1951									
1952									
1953									
1954	16								
1955	19				40		14	20	6
1956	27	5			42		26	11	9
1957	38	9			71		45	26	1
1958	64	7			111		77	36	
1959	66	3			127		83	44	
1960	130	11			79		55	35	
1961	100	5			115				
1962	41	1			91				
1963	219	2			74				
1964	83				85				
1965					69				
1966	72	13			52				
1967	7	11			89				
1968					62				
1969					127				
1970	11	7		2	140	35	76	31	18
1971	10	9		29	147		96		51
1972	5	7		89	83	61	141	71	571
1973					94				
1974			6	34					
1975			0	31	10				
1976			1	20	16				

¹Recommended complaints

Source: Stephen Bruce, "Report on Enforcement Activities of the Federal Trade Commission," (unpublished paper, Committee on Legal Indicators of the Center for Coordination of Research on Social Indicators, Social Science Research Council, 1978), Table 10.

information system. Unfortunately one cannot secure a measure of agreement in classification for the Posner and FTC classifications of the same cases.

Often it is difficult to determine how accurate is the classification of cases for a given class because the definition of what constitutes a case may be ambiguous or defined in different ways for different purposes. Care must be exercised, also, in interpreting two or more time series that obviously have different numbers of cases "classified in the same way" for the same periods of time. What is unfortunate is that often it is impossible to track down why there are differences in the size of statistical bases for what patently seems to be the same information from the same system of statistical reporting. For the sake of remaining within the same agency source, we again choose the FTC information system to illustrate this problem in classification and reporting.

The FTC regularly reports on preliminary investigations opened and Table 4.18 presents information on preliminary investigations opened for the period 1970-1976 (Bruce, 1978:Table 5; Berney, 1979:Table 5.11). For the 1971-1974 period, the staff of FTC wished to demonstrate to the Committee on Interstate and Foreign Commerce of the U.S. House that there was a substantial decline in preliminary investigations opened and consequently they prepared the graph presented as Figure 4.1 (Berney, 1979:Chart 4).

When one compares the number of cases reported for each of the four years in Table 4.18 with the numbers reported for the same years in Figure 4.1, one notes a substantial discrepancy for the year 1972 with substantially more cases, about 9,000, reported for 1972 in the staff report compared with 6,417 in the annual report. There is some discrepancy also for 1974, with fewer than 4,000 estimated for 1974 and 4,793 reported in the annual FTC report.

It is difficult to determine the source of these discrepancies in total cases reported. The most obvious answers may be that a mistake was made in graphing the 1972 data point in the graph and that the addition of an estimate of the fourth quarter for 1974 in the staff report account for these discrepancies. If so, they point to other sources of inaccuracy in comparing sources of information for the same data. But what is apparent is that we have no information to assess which is the "correct" figure for 1972 by some measure of accuracy for each statistic. Absent any information on the report for the first three quarters of 1974 for both series and a knowledge of how the fourth quarter was estimated for the staff report, we likewise cannot determine the source of the discrepancy for 1974.

TABLE 4.16
FEDERAL TRADE COMMISSION RESTRAINT-OF-TRADE CASES
FOR THE YEARS 1915-1969¹

Year Initiated	Number	Year Initiated	Number	Year Initiated	Number
1915	0	1935	30	1955	29
1916	1	1936	33	1956	22
1917	20	1937	18	1957	16
1918	64	1938	28	1958	13
1919	121	1939	31	1959	12
1915-1919	206	1935-1939	140	1955-1959	92
1920	18	1940	33	1960	26
1921	26	1941	32	1961	7
1922	32	1942	16	1962	15
1923	50	1943	14	1963	9
1924	51	1944	8	1964	12
1920-1924	177	1940-1944	103	1960-1964	69
1925	21	1945	6	1965	18
1926	4	1946	9	1966	19
1927	8	1947	11	1967	9
1928	10	1948	11	1968	15
1929	17	1949	10	1969	15
1925-1929	60	1945-1949	47	1965-1969	76
1930	12	1950	5	Total	1061
1931	4	1951	18		
1932	3	1952	16		
1933	4	1953	7		
1934	14	1954	11		
1930-1934	37	1950-1954	57		

¹Excluding-Robinson-Patman cases that do not allege predatory pricing.
Source: Computed from FTC Docket of Complaints and FTC Decisions. Reprinted in: Posner, Richard. "A Statistical Study of Antitrust Enforcement" Journal of Law and Economics, 13:365-419 (1970), p. 369.

TABLE 4.17
 VIOLATIONS ALLEGED IN FEDERAL TRADE COMMISSION CASES
 FOR THE YEARS 1915-1969

Violation	Year in Which Case Was Brought												Grand Total	1930 to 1969 Total
	1915 to 1919	1920 to 1924	1925 to 1929	1930 to 1934	1935 to 1939	1940 to 1944	1945 to 1949	1950 to 1954	1955 to 1959	1960 to 1964	1965 to 1969			
Horizontal Price Fixing	11	35	9	14	74	64	26	25	22	7	4	291	236	
Monopolization	3	11	3	2	10	8	1	3	1	12	6	60	43	
Acquisition Short of Monopoly	17	18	18	3	18	2	1	6	22	31	51	187	134	
Boycott	8	20	5	5	23	28	6	14	9	5	2	125	92	
Resale Price Maintenance	62	70	21	6	14	0	2	1	9	6	6	197	44	
Tying	25	17	1	2	10	15	7	7	3	2	0	89	46	
Exclusive Dealing	47	24	2	4	11	5	11	11	29	7	1	152	79	
Price Discrimination ¹	72	28	3	5	11	10	1	1	5	6	2	144	41	
Violence	4	3	4	0	3	0	0	0	2	2	0	18	3	
Labor	0	0	0	0	5	4	0	0	2	0	0	11	11	
Patents	0	0	0	0	2	2	3	0	0	0	0	7	7	
Other or N.A.	4	4	1	4	2	1	0	1	3	2	2	24	15	
Total	253	230	67	45	183	139	58	69	107	80	74	1305	751	

¹Excluding Robinson-Patman Acts cases, save those charging predatory price discrimination.
 Source: Computed from FTC Docket of Complaints; FTC Decisions. Reprinted in: Posner,
 Richard, "A Statistical Study of Antitrust Enforcement," Journal of Law and Economics,
 13:365-419 (1970), p. 408.

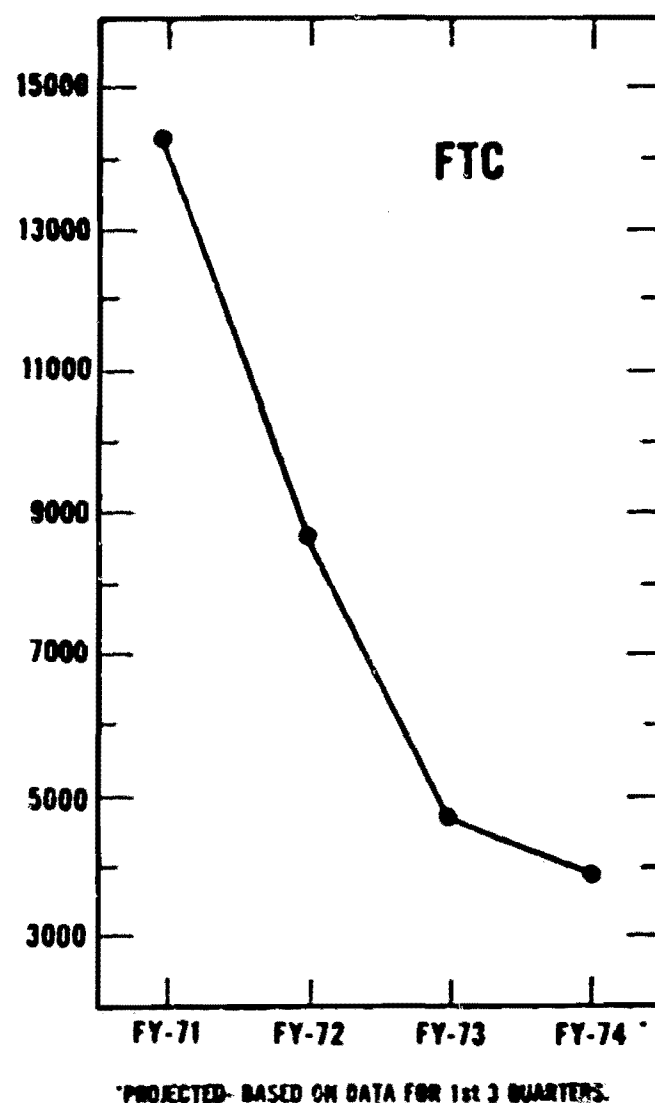
TABLE 4.18
PRELIMINARY INVESTIGATIONS OPENED BY THE
FEDERAL TRADE COMMISSION, 1970-1976.

Year	Total	Antimonopoly	Deceptive Practices
1970	10776		
1971	14668	322	14326
1972	6417	274	6143
1973	4390	85	4305
1974	4793	110	4683
1975	1002	94	908
1976	486	117	369

Source: Stephen Bruce, "Report on Enforcement Activities of the Federal Trade Commission," (unpublished paper, Committee on Legal Indicators of the Center for Coordination of Research on Social Indicators, Social Science Research Council, 1978), Table 5.

Figure 4.1

PRELIMINARY INVESTIGATIONS COMPLETED



Source: Committee on Interstate and Foreign Commerce, FTC, 1974 Staff Report (1975), Washington, D.C.: U.S. Government Printing Office, p. 14.

For all cases, we have no independent source of the information as a basis for a determination of the accuracy of each.

We noted that when merging cases, the choice of category definitions can be misleading, given the nature of the classes merged. This was clear in comparing some aspects of the Posner-FTC classifications of restraint of trade cases. But other matters are apparent in the collation of statistics for each year and the merging of them to make a time series. For one thing, there may be some misrepresentation or misunderstanding of what constitutes the larger class unless the subclasses that make it up are specified clearly and unambiguously. But what also often may be the case is that the subclasses do not fluctuate in quite the same way as the combined class. This is obvious enough to anyone familiar with the way two or more series with opposite trends or opposing fluctuations may cancel the effects of one another. What must be cautioned against then is that one does not assume that the trend in the collated category of classes is the same for all subclasses.

This problem of discrepant fluctuations in trends for subclasses is evident in the trends for FTC restraint of trade and its subclasses. In the tables presented below, the FTC report of seven-digit investigations opened, Table 4.19 (Bruce, 1978:Table 6; Berney, 1979:Table 5.12) agrees with the annual figures in the ABA report for the years 1964-69, Table 4.20 (ABA, 1969:17; Berney, 1979, Table 5.13).

But a comparison of the trend line for all restraint of trade cases with those for the subclasses reported in Table 4.20 shows that the subclasses do not always fluctuate as does the total class. This is not an uncommon finding when the subclass represents a relatively small proportion of the total class. Correspondingly we find that one of the smaller classes of restraint of trade, mergers, do not fluctuate as does the annual rate for all restraint of trade cases in Table 4.20. Even for the larger classes, however, one might reach erroneous conclusions. Thus there was a very substantial increase in restraint of trade cases from 1966 to 1967. But, there was almost no change from 1966 to 1967 in one of the two largest classes--general trade restraints. Almost a doubling for the largest class--discriminatory practices--and a substantial increase relative to its size for mergers accounted for virtually all of the substantial increase for all reported cases in restraint of trade.

We do not wish to belabor the point that merging of information in collation is fraught with erroneous inference about the behavior of its composite elements or classes.

TABLE 4.19

SEVEN-DIGIT INVESTIGATIONS OPENED
BY THE FEDERAL TRADE COMMISSION, 1956-1976

Year	Total	Restraint of Trade	Deceptive Practices		
			Total	All Other	Textile, Wool, Fur, and Flammable Fabrics
1956	992	213	779		
1957	1272	320	957		
1958	1059	291	768		
1959	1072	213	859		
1960	1946	760	1186		
1961	2024	884	1141	899	241
1962	1795	741	1054	897	157
1963	1311	301	1010	854	156
1964	1383	351	1032	686	346
1965	1067	236	831	615	216
1966	1157	249	908	748	160
1967	1192	352	840	666	174
1968	752	218	534	388	146
1969	611	181	438	192	238
1970	682	180	502	260	242
1971	901	157	741	535	206
1972	474				
1973	815	105	710	677	33
1974	399	83	316		
1975	263	44	219	188	31
1976	194	68	126	115	11

Source: Stephen Bruce, "Report on Enforcement Activities of the Federal Trade Commission," (unpublished paper, Committee on Legal Indicators of the Center for Coordination of Research on Social Indicators, Social Science Research Council, 1978), Table 6.

TABLE 4.20

Restraint of Trade	Year					
	1964	1965	1966	1967	1968	1969
Discriminatory Practices	198	75	81	159	73	53
General Trade Restraints	110	99	107	112	64	67
Mergers	43	62	52	76	68	50
Compliance			9	5	12	11
Office of the Director					1	
Total	351	236	249	352	218	181

Source: Report of the ABA Commission to Study the
FTC, Sept. 15, 1969, p. 17.

But additional evidence is found in FTC workload statistics for types of investigations in Table 4.21 (Berney, 1979:Table 5.15; ABA, 1969:19). Here we note that while the total number of restraint of trade investigations declined substantially and from year to year from 1965 to 1969, the decline occurred regularly and substantially only for discriminatory practices investigations. Indeed there were more total investigations in 1969 than in 1965 for each of the other subclasses of restraint of trade--general trade restraints, mergers, and compliance cases.

In collating information from different agency sources the same problem should arise quite frequently. While we can observe what each agency contributes to an annual collated series, unless we have similar information for aggregated subclasses, we can have annual fluctuations from both sources reflected in the merged series and inferences about agency sources per se might be misleading, particularly where there are interaction effects.

Effect of External Sources
of Variability on Time Series
of White-Collar Law-Breaking

Time series on white-collar violations of law are of interest both as social indicators of social change and to test hypotheses about the violation of law under changing conditions.

Up until this point we have focused primarily on how each particular information system causes variation in the production of time series and on the effects this variation may have on collation of series. Yet any statistical information system also is affected by actions taken outside of it. These externally produced effects might create relatively few problems for the development and interpretation of any agency's statistical time series and its collation with those produced by others were the external source of variation uniformly causal for all series or were one able to take the effects into account in some common calculus. Unfortunately, most of the time that is not the case. This is so for a number of reasons.

Firstly, external sources of variability in the production of information on white-collar law violations often are discrete and unique events that have point-in-time effects for a given agency. Legislative acts, for example, ordinarily affect only one or a few agencies. An act, for instance, might increase the number and kind of matters an agency may treat as violations. Where those mandates were taken from some other agency, one would look for effects in both agencies' data but legislation also may be "new law" defining "new violations" and one could not derive any measure of what might be expected by way of its effect on

TABLE 4.21
SEVEN DIGIT INVESTIGATIONS FOR THE TOTAL WORKLOAD
OF THE FEDERAL TRADE COMMISSION, 1965-1969

Investigation	Fiscal Year				
	1965	1966	1967	1968	1969
Restraint of Trade	1659	1181	1046	943	933
Discriminatory Practices	1193	693	475	373	352
General Trade Restraints	329	332	367	334	340
Mergers	137	147	187	207	202
Compliance		9	17	29	37
Deceptive Practices	1832	1882	1756	1598	1279
Textiles and Furs	502	388	376	333	406
Totals	3993	3451	3178	2874	2618

Source: Report of the ABA Commission to Study
the FTC, 1969, p. 19.

statistical counts. Such discrete and unique events will tend to affect different agencies in different ways at different times. The measurement and interpretation of these effects is difficult enough for any single agency's series but it becomes particularly difficult to take such diverse discrete sources into account when time series are merged, e.g., a time series on fraud based on reports from some 40 or 50 different agencies.

Secondly, each statistical information system is poorly organized, both to gather information on external changes that may have an effect on the production of information by their agency and to measure it. It may be simple enough to keep track of legislative changes or directives from OMB, more difficult to define and pinpoint major policy changes and measure them, and exceptionally hard to gather information on changes in opportunity or behavior systems that can affect the production of information.

Difficult as it may be for each agency to collect and compile such information on external sources of variability and to measure their effects on the collection, processing, and reporting of information, it is a most difficult matter when one would collate information across the agencies. It is unfortunately the case that for many kinds of white-collar law violation and for many variables related to them, the same information or the same kind of information is produced by a number of different agencies. Yet there is no central agency that has information for each agency's statistical information system that makes it possible to merge or collate the series.

Thirdly, the sources of change in statistical series are often the result of several interrelated changes. A legislative change also tends to produce administrative changes which in turn may produce changes in the way information is categorized and processed. We could provide many examples of these ripple effects. When the Nuclear Regulatory Commission (NRC) was created, the regulatory functions formerly assigned to the Atomic Energy Commission (AEC) were transferred to it. At the same time the regulatory authority of the NRC was increased considerably. These changes in law, administration, and internal organization that attended the creation of NRC appear to have had substantial effects upon their reports on the detection of violations of radiation standards. It would be difficult to partial out the independent effects of legislation, administration, and internal organization since both internal and external sources of variation attended the creation of NRC, affecting the kind and level of inspections and the definitions of standards governing the detection and reporting of violations. For the same reasons it may be even more difficult to determine how much effect the Three Mile Island episode and the Kemeny Commission subsequently

have had upon the detection and reporting of violations involving radiation hazards. It would be even more difficult to determine whether these episodes had any effect on the reporting of radiation hazards by OSHA and FDA.

Fourthly, we have noted earlier that the contribution of any external source to the behavior of systems may change over time. Its effects may be delayed, altered by later changes, or occur only at an immediate point of implementation. Keeping track of other than immediate effects on a time series is a complex and often an impossible attainment. An examination of FDA legislation (Heaviside, 1979) suggests that most legislative effects on statistics are delayed by some period of time during which the legislation is translated into standards or rules that must be promulgated. There are subsequent delays in allocating enforcement staff to detecting violations of new rules or in including their detection in current enforcement practices. It is almost axiomatic that no agency carefully documents these changes so that one can relate them to changes in statistical reporting in the same time dimensions. This is so for a number of reasons, but most particularly for the same reason that evaluation studies often limit their criterion variable to outcome measures--there are few established and quantitative ways to measure changes in social processes. Measuring organizational change is essential if its effects on the production of information are to be assessed in any reasonably precise way. Lacking ways to handle this matter, we must recognize that our efforts to look at changes in violation behavior over time will depend in part upon our capacity to discover and measure these external sources of variability.

Finally, we should point out that there does not exist any theory or model of sources of variability in the production of information on law violations. One is left primarily with an ad hoc assessment of these possible sources of change over time for each producer of information. To return to our example of FDA, in addition to the many legislative and administrative changes that might have affected the detection and processing of violations of FDA laws and regulations over time, there have been changes in how matters are defined and categorized in response to external changes in scientific knowledge about food and drugs, the increased use of drugs in the population and their sources of supply, and changes related to opportunities for the use of drugs and for detection of violations in their use. But, it is patent that this brief catalogue is neither exhaustive nor responsive to common dimensions for classifying sources of variability. Given the fairly rapid growth in government regulation of matters whose violations are likely to be treated as white-collar delicts, it seems reasonable to assume that white-collar law-breaking time series must take exogenous variables into

account in the explanation of change or stability over time. Such external sources of variability ordinarily are expected to produce increase or decrease in rates, but there may be compensating changes that produce a stable aggregate, as we have previously shown.

It would be mistaken to assume that this problem of exogenous effects on time series of law violations inheres primarily in understanding trends in white-collar law violations. Much has been written on how internal administration in police departments may affect the quality and quantity of information on Part I and Part II ordinary crimes. Although little attention is paid to how external changes affect trends in ordinary crime, it is unreasonable to assume that ordinary crime time series are immune to such sources of change. Setting aside the fact that all causal theories of violative behavior (except for some labeling theories) will depend primarily upon exogenous variables, there clearly are many other sources of variability for ordinary crime rates in addition to the internal ones addressed by labeling theorists. A few labeling theorists, including the theory's progenitor, Lemert, have been particularly interested in such external sources. Lemert for example, has paid particular attention to the effects of changes in juvenile law and its administration (1976).

Assumptions that trend lines for ordinary crimes are unaffected by exogenous sources of variation are unwarranted as the following examples for ordinary crimes illustrate.

During the late thirties there was a substantial decline in the bank robbery rate owing to federal legislation and regulation. The robbery rate fell sharply when banks had to meet physical security standards under federal regulation. Developments in branch banking and the disbursement of branch offices undid much of the effect of that legislation, with the consequences of a substantial increase in the bank robbery rate since the 50's.

A somewhat different case is presented by the auto theft rate. As the auto theft rate rose after World War II, the FBI observed that the cars manufactured by one of the major producers were stolen more frequently than were other makes of car. Investigation disclosed that these differences in theft rates could largely be attributed to differences in the locking mechanisms of cars. This discovery led to a change in the locking mechanisms of the vulnerable manufacturer, resulting in a sharp downturn in the auto theft rate. This case provides an example of how "changes in opportunity" affect crime rates.

Another example is found in a review of changes in assault rates. Changes in the proof required for sustaining allegations of rape--simplifying the evidentiary requirement

to eliminate need for corroboration, together with changing demands from women for arrest and prosecution of men--may be leading to increase in the reporting of rapes to the police. The growing attention given to spouse and child abuse and to their detection and prosecution (such as the agreement reached between women's groups and the NYPD on prosecuting husbands who assault wives) likewise may affect the crime composition of assaults of women as well as their amount.

Most types of crime in fact are subject to the same kinds of exogenous sources of variation in their definition, detection, and processing. It would be a relatively simple matter to show that some ordinary crimes--such as drug possession, use, or sales--vary over time due to legislative, administrative policy, and other changes outside of the particular law enforcement or adjudication agency for which the trends are to be explained. Some offenses, such as disorderly conduct, have been subject to judicial as well as legislative and administrative changes.

Understanding changes in rates of violation for white-collar delicts requires, then, two types of explanatory theories. First, we must have theories about what causes changes in the behavior that is defined as a violation of law. And second, we must have theories about what causes change in the behavior of the law itself and how it comes through social organization to define, process, and report matters as law violations. Each type of theory must define both endogenous and exogenous sources of variation to explain changes. These types of theories provide a basis for searching for exogenous sources of variation in law violation rates and of matters related to them.

Our primary interest here lies in the second type of theory and the class of exogenous variables it treats. We shall try to show in a series of examples that follow how changes in exogenous variables that define and label matters as white-collar law violations explain changes in agency time series on violations of law. Our examples are chosen from published statistical series where the definitions of law violations do not conform in any precise way to our definition of a white-collar violation of law. Nonetheless, many such matters are included in the defined classes, and in any case, they are useful illustrations of how substantial each kind of variation can be in understanding changes in violation rates.

Before turning to examine some of these endogenous sources of explanation for changes in reported violations of law or matters relating to their processing, a few observations about when one searches for such explanations may be in order.

Where there are marked changes from one year to the next--particularly where such changes reflect a return to a status quo--and where there is any sharp change which then stabilizes or proceeds at a much slower rate, one ordinarily would look for an explanation in the behavior of organizations in defining and reporting matters as violations of law. Correlatively, where such changes are more regular and systematic, one might seek the explanations either in causes of changes in violation behavior or in opportunities for it and its detection.

This strategy for seeking explanations rests in presumptions about the two types of causal theory; one addressed to gradual, diffuse systemic change, the other to more abrupt concentrated organized systematic change. Theories about what causes persons to be deviant or violate the law, (i.e., behavior theories), ordinarily select and utilize explanatory variables that do not behave in an erratic fashion from year to year--though such fluctuations are more characteristic of opportunity than of other types of deviance causal theories. Correspondingly, theories about organizational behavior often select explanatory variables where discrete--even short-run changes--many have a considerable impact. This is characteristic of some labeling theories of deviance, but it is particularly characteristic of administrative theories of organizational behavior. This is not too surprising in that administrative theories focus upon variables that can be manipulated by administrators to bring about changes in organizational behavior. In the same way, theories about the exercise of discretion applicable to legislative, executive, and judicial behavior in defining and deciding matters permit of explanations for short-run and seemingly erratic changes in a time series.

In what follows, it will be apparent then that our interest in explaining changes in violations over time has been focused by short-run fluctuations or major shifts between any two years in the reporting of white-collar violations of law.

Statutory Changes. A major exogenous source of systematic change in statistical series on white-collar violations of law are statutory changes in the legal powers of agencies or their agents, or in what constitute law violations and the means that may legally be used to detect, prosecute and adjudicate matters. These sources of change often occur together or in a structured sequence. A statutory change transferring the responsibility for law enforcement in a particular set of matters to another agency should affect the time series of each agency, but it also may affect the time series itself because of changes related

to the transfer as well as the organization of the detection and labeling processes in the agency to which matters are transferred.

Administrative Policies and Practices. Changes in administrative policies and their effect on administrative practices also account for changes in trends in law enforcement and regulation and in social indicators of law violation. It is difficult to determine to what extent such administrative policies originate within rather than outside the agency in which they are implemented. There are cases where changes in agency policies originate with major changes in political power and office holding--both by election and appointment. Thurman Arnold, it is said, had a major impact upon the increase in antitrust prosecutions following his appointment to the SEC. In our selection of statistical series where the effect of changes in administrative policies and practices seems quite evident or should be capable of demonstration in some detailed way, we have not attempted to determine the extent to which a change reflects endogenous sources. We have selected the relatively long time series for FDA enforcement to illustrate some of the ways that administrative changes in how matters are defined, detected, and counted have an impact on statistical reporting of events that might be treated as white-collar law violations.

Table 4.22 and its footnotes reporting on FDA enforcement activities from 1919 to 1977 discloses some of the difficulty in constructing a time series of FDA violations (Heaviside, 1979:Table B.1). One notes that there not only are changes in definitions and in kinds of enforcement actions and activities, but that there are substantial fluctuations in total FDA enforcement activities over time that must be attributed to either changes in violation behavior or in the agency's enforcement and statistical reporting. Intensive investigation to account for the fluctuations in Table 4.22 might well disclose all of these sources of fluctuation in the trend line. Our purpose here is simply to show how some major administrative definitions and practices in enforcement and in statistical reporting probably affected the record of violations reported in Table 4.22.

TABLE 4.22
FOOD AND DRUG ADMINISTRATION
ENFORCEMENT ACTIVITIES, 1919-1977

FY	Seizures		Criminal Prosecutions		Total
	Actions	Violative Samples (Upon which seizure based or recommended)	Violative Samples	Actions	
1919 ²	1,052	----	----	1,133	2,185
1920	1,407	----	----	818	2,225
1921	1,677	----	----	608	2,285
1922	1,133	----	----	560	1,693
1923	829	----	----	621	1,450
1924	808	----	----	690	1,498
1925	910	----	----	746	1,656
1926	853	----	----	491	1,344
1927	695	----	----	258	953
1928	748	----	----	267	1,015
1929	901	----	----	309	1,210
1930	937	----	----	168	1,105
1931	1,430	----	----	547	1,977
1932	1,260	----	----	1,307	2,567
1933	1,624	----	----	1,153	2,777
1934 ⁴	----	1,729	1,098	----	2,827
1935	----	2,011	1,029	----	3,040
1936	----	1,493	1,190	----	2,683
1937	----	1,329	960	----	2,289
1938	----	1,992	726	----	2,718
1939	----	2,048	705	----	2,753

TABLE 4.22
FDA ENFORCEMENT ACTIVITIES, 1919-1977
(Continued)

FY	Seizures		Criminal Prosecutions		Total
	Actions	Violative Samples (Upon which seizure based or recommended)	Violative Samples	Actions	
1940	----	1,697	337	----	2,034
1941	----	2,016	1,155	----	3,171
1942 ⁵	----	2,092	1,227	----	3,319
1943 ⁶	1,935	2,659	1,060	341	2,276
1944	2,143	3,026	1,004	286	2,429
1945	3,112	4,754	1,268	380	3,492
1946	2,835	3,966	1,133	350	3,185
1947	2,197	2,920	1,354	555	2,752
1948	1,193	1,711	1,287	421	1,614
1949	1,840	2,683	1,204	350	2,190
1950	1,460	2,199	1,388	378	1,838
1951	1,341	1,997	1,210	347	1,688
1952	1,651	2,496	1,095	263	1,914
1953	1,442	2,168	1,137	329	1,771
1954	1,057	1,577	1,057	260	1,317
1955	1,049	1,597	1,079	248	1,297
1956	835	1,324	890	209	1,044
1957	809	1,186	784	192	1,001
1958	1,027	1,712	891	203	1,230
1959	1,047	1,670	879	206	1,253

TABLE 4.22
FDA ENFORCEMENT ACTIVITIES, 1919-1977
(Continued)

FY	Seizures		Recall	Criminal Prosecutions		Total
	Actions	Violative Samples (Upon which seizure based or recommended)		Violative Samples	Actions	
1960	1,002	1,614	n/a	1,279	248	1,250
1961	1,038	2,060	n/a	1,483	269	1,307
1962	1,273	2,402	n/a	1,661	314	1,587
1963	1,049	1,938	n/a	1,440	248	1,297
1964	1,288	1,968	n/a	1,306	205	1,493
1965	957	1,691	n/a	1,733	290	1,247
1966	1,065	1,773	538	985	291	1,356
1967	1,165	----	900	----	407	1,572
1968	749	----	902	----	80	829
1969	449	----	910	----	59	508
1970	608	----	1,427	----	42	650
1971	780	----	1,986	----	52	832
1972	869	----	1,029 ⁸	----	81	950
1973	1,216	----	1,549	----	118	1,334
1974	417	----	881	----	93	510
1975	516	----	948	----	45	561
1976	323	----	864	----	34	357
1977	556	----	890	----	32	588

TABLE 4.22 NOTES
FDA ENFORCEMENT ACTIVITIES, 1919-1977

Source: Food and Drug Administration Annual Reports, 1950-1977. Federal Food, Drug, and Cosmetic Law Administrative Reports, 1907-1949; published by Commerce Clearing House.

Notes:

1. Total: For purposes here represents only seizure plus prosecution.
2. During the years 1922-1933, the statistics found in the administrative reports are delineated only in terms of "Prosecutions and Seizures." Before that date, the label reads "Recommendations of Actions."
3. Not reported.
4. The years 1934-1943 are reported as follows: Summary of Samples upon which prosecutions and seizures are based. The figures in the column headed "criminal prosecutions" refer to the number of samples representing interstate shipments alleged to have been in violation of the statute and referred to the Solicitor of the Department as bases for criminal prosecutions against the responsible shippers. They do not coincide with the number of legal actions instituted or terminated during the year since in most instances a number of alleged offenses by the same shipper are consolidated in one criminal action.
5. Note: 1942-1943 individuals or firms involved increased 342-525.
6. The years 1943-1967 continue the aforementioned reporting system with the addition of the number of court actions instituted. The number of samples on which the actions are based always exceeds the number of actions; in seizures a variety of articles may be contained in a single shipment, while in criminal actions each sample usually represents a single shipment which forms one count of an action.
7. For the years 1968-1974 the category label violative sample drops out and the remaining information refers to seizures and prosecutions instituted and filed.
8. In 1972 all shipments, package size, and buyer's labels of the product recalled were counted as one recall. There was little if any reduction recall operations.

Definitions:

Prosecution: A criminal proceeding against an individual and or firm for violation of an act enforced by the Food and Drug Administration.

Seizure: Removal of goods from distribution through court order.

Recall: A field correction or removal from the market or products which are subject to legal action due to violation of the law.

Heaviside (1979) found evidence that the increase in enforcement actions between 1930 and 1931 and their continued rise to 1933 is probably due to the special pleadings the FDA made to the Congress for an increased enforcement budget. The Congress responded with increased appropriations which were allocated to enforcement activities. Increased enforcement actions are evident in Table 4.22 for both seizures and criminal prosecutions.

The substantial drop in FDA enforcement actions from 1939 to 1940 and a sizeable increase from 1940 to 1941 clearly requires some very short-run explanation. In 1938, the FDA's statutory authority was expanded to include cosmetics, and the penalties for many violations were increased (21 U.S.C. 301-392). An amendment in 1939 postponed the effective date of the implementation of the 1938 Food, Drug, and Cosmetics Act to January 1, 1940. Accordingly, 1940 was a year of transition and the total and specific enforcement actions clearly reflect that fact. By 1941, the pattern of enforcement was similar to that of 1939, though at somewhat higher levels.

For reasons that are not altogether clear (Heaviside, 1979), the FDA budget was substantially reduced for Fiscal Year 1954. The size of the enforcement staff was cut correspondingly so that in 1954 it was roughly equivalent to 1940. The sharp drop in enforcement actions from 1953 to 1954 soon stabilized. Attempts to restore these cuts appear to have had an impact, beginning with a substantial increase in 1958, though there had been some restoration in 1956 and 1957 as well (Heaviside, 1979).

The kind of enforcement actions taken by an agency depends upon both legislative and administrative changes in alternative actions, following the detection of violations, and upon administrative policies and practices regarding the relative use of alternatives. Early on, the FDA relied primarily upon seizures of food products that violated standards, upon civil injunctions, and upon bringing criminal prosecutions where such action seemed warranted. Seizures and injunctions were in some sense preferable to criminal prosecution as the delay and cost of criminal prosecution handicapped the protection of the public; seizures of dangerous products or injunctions against their sale provided immediate protection. Over the years some of these means were challenged, such as in the 1946 decision of the 9th Circuit, U.S. v. Phelps Dodge Mercantile Co., (157 F.2d 453) a certiorari was denied in 1947 (330 U.S. 818).

In general the use of injunctions in court actions and criminal prosecutions, as well as the use of seizures, became more frequent FDA enforcement actions up to 1946, as Table 4.23 and Figures 4.2 and 4.3 disclose. The effect of the 9th Circuit's decision on seizures is readily apparent

in Table 4.23 and Figure 4.2. In *Mercantile Co.*, 157 Fd2 453 (cert. denied 330 U.S. 818 (1947)) the court ruled that FDA did not have the requisite federal jurisdiction to seize products adulterated or misbranded after interstate shipment. Other new mechanisms that are alternatives to court actions have developed in recent years, such as the use of recalls and regulatory letters. Such decisions about the use of existing alternatives and the adoption of additional ones had substantial effect upon the use of court actions over time.

Seizures dropped dramatically in 1947 when the U.S. Supreme Court refused certiorari on the 9th Circuit case. Food seizures based on filth and decomposition, for example, decreased to 994 in 1947 from more than 1700 in each of the two previous years (Heaviside, 1979). Congress remedied this legal impediment to seizure in 1948 by affirming FDA's jurisdiction to seize products after interstate shipment, and there is a rise again in 1949.

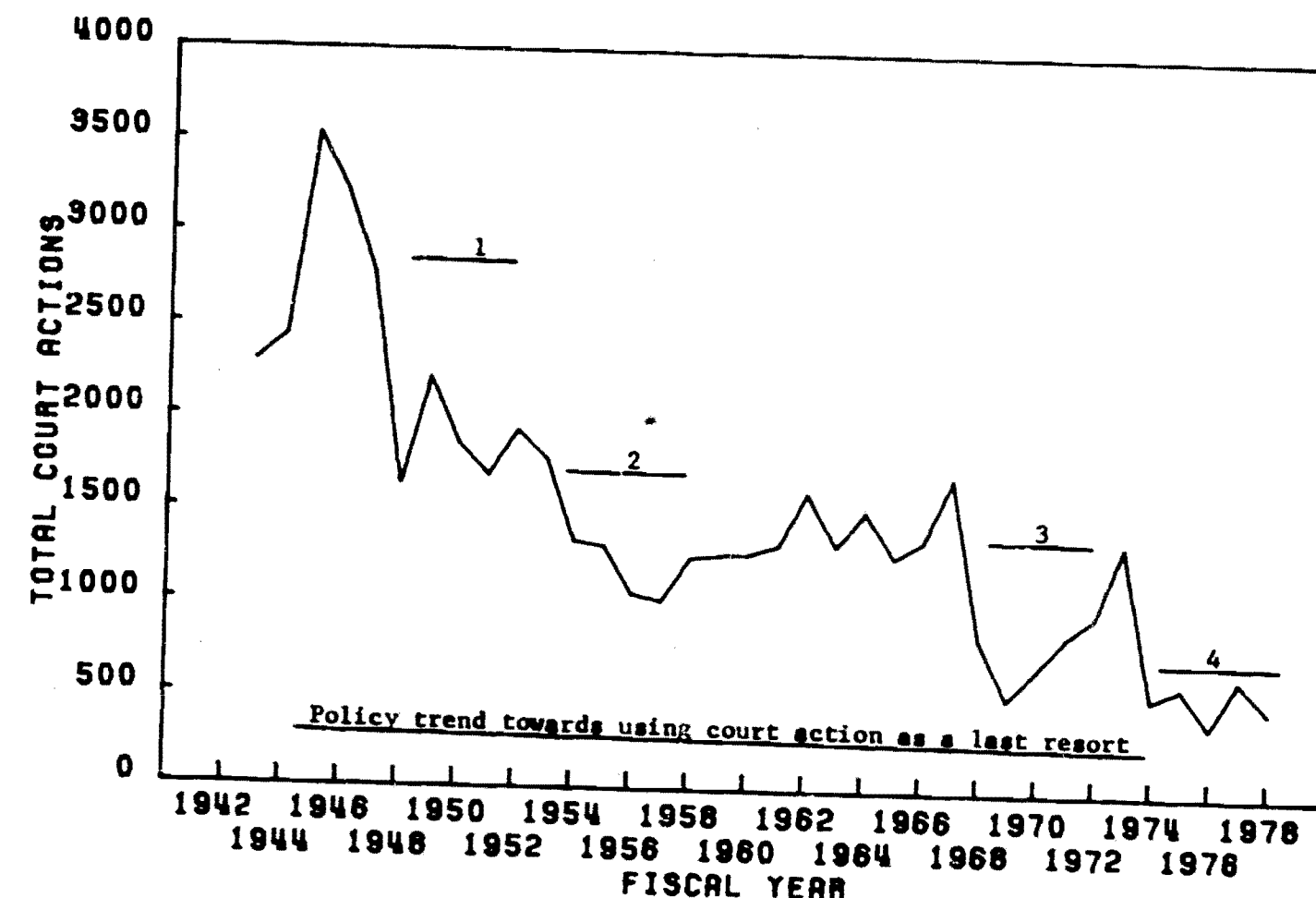
The use of court actions was increased somewhat in the late 1950's and early 1960's with the passage of several major pieces of legislation giving enforcement powers to FDA: The Pesticide Amendment of 1954, the Food Additive Amendment of 1958, and the Color Additives Amendment of 1960. Together these three account for some rise during the period 1955-64.

Of considerable impact on the filing of criminal prosecutions (actions in Table 4.22) was the development of executive policies toward increased drug enforcement during the 60's. In 1946 only 74 of 350 criminal filings were for drug related matters. By 1966, 231 of 291 filings in Table 4.22 were drug related and it was 312 of 407 in 1967 (Heaviside, 1979). The transfer of the Bureau of Drug Abuse Control to the U.S. Department of Justice in 1974, following the creation of the Drug Enforcement Administration within Justice in 1973, led to a sharp drop in criminal prosecutions--from 407 in 1977 to only 80 in 1968. After some other transfers of functions, by 1973 the major criminal prosecutions under FDCA were confined to the single area of insanitary food and food storage--96 of the 118 filings in that year were for sanitary related violations (Heaviside, 1979). There also were losses of authority from FDCA to EPA of recalls of hazardous substances such as pesticides and of the enforcement of regulations governing poison prevention packaging.

Perhaps one of the most significant changes in the activity of FDCA over time was the replacement of judicial remedies (seizures, injunctions, and criminal prosecutions) as a means of social control by regulatory actions (regulatory letters and recalls). FDCA began to develop regulatory alternatives after World War II when recalls were

Figure 4.2

TOTAL COURT ACTIONS BASED ON FDA TOTAL SEIZURES, INJUNCTIONS, AND CRIMINAL PROSECUTIONS, 1942-1978



Notes on Sources of Use of Court Actions as a Last Resort

- ¹ *United States v. Phelps Dodge Mercantile Co.*, 157 F.2d 453 (9th Cir. 1946); cert. denied 330 U.S. 818 (1947).
- ² Reduction in budgeted positions for Food and Drug Administration enforcement operations
- ³ Category "illegal drug sales" transferred to the Department of Justice
- ⁴ Introduction of the "Regulatory Letter" and also the distorting effect of multiple seizures in the medical device category realized during 1973.

Source : FDA Annual Reports ; 1943 - 1977.

TABLE 4.23

TOTAL COURT ACTIONS IN FOOD AND DRUG
ADMINISTRATION CASES, 1943-1978

Fiscal Year	Court Actions
1943	2,298
1944	2,435
1945	3,527
1946	3,221
1947	2,777
1948	1,634
1949	2,207
1950	1,853
1951	1,692
1952	1,929
1953	1,782
1954	1,333
1955	1,307
1956	1,053
1957	1,014
1958	1,252
1959	1,270
1960	1,274
1961	1,326
1962	1,612
1963	1,327

TABLE 4.23

TOTAL COURT ACTIONS IN FOOD AND DRUG
ADMINISTRATION CASES, 1943-1978
(Concluded)

Fiscal Year	Court Actions
1964	1,515
1965	1,266
1966	1,362
1967	1,699
1968	839
1969	513
1970	674
1971	845
1972	968
1973	1,350
1974	523
1975	593
1976	380
1977	640
1978	470

Source: FDA Annual Reports, 1943-1977; FDA Quarterly Activities Report - Fourth Quarter 1978.

Definition:
Court Actions = prosecutions + seizures + injunctions.

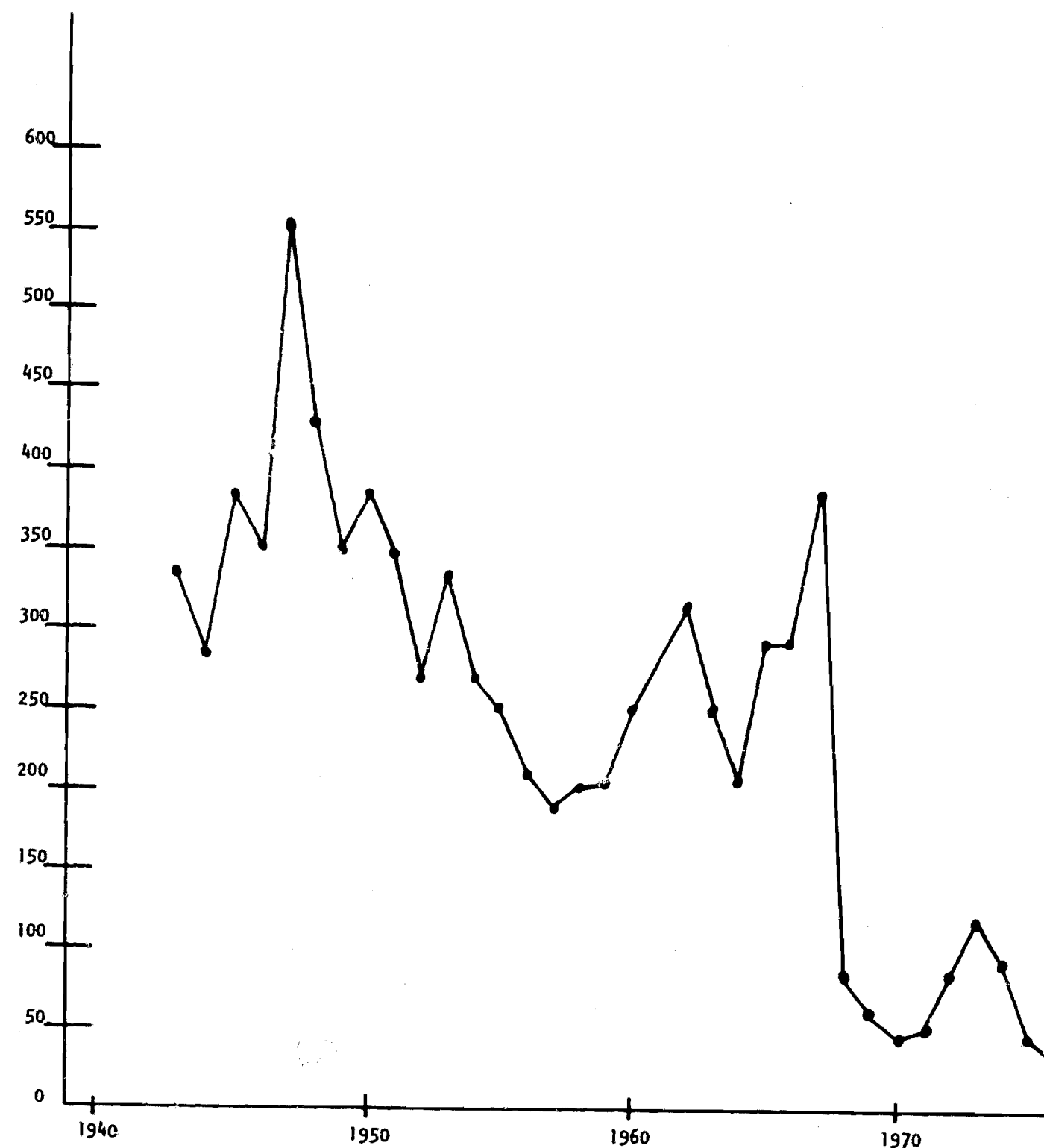
instituted as an alternative to seizures and court actions. Beginning in the mid-60's the FDCA adopted policies that were more oriented toward compliance than toward law enforcement. The public policy concept emerged that the public was better protected when industry never produced or marketed unsafe products. Accordingly, new standards were adopted for the approval of new products to be marketed. At the same time, the agency increased its use of recalls as a means of inducing compliance for products that had already been marketed. Harm might be prevented then not by injunction against their sale--which might be difficult--but by recalling products, including those already on market shelves. There was a substantial increase of recalls beginning in 1967, with a peaking in 1971. It is difficult to determine the comparability of subsequent recall statistics since there have been changes in how recalls are counted, there being multiple recalls in 1972 and succeeding years that appear more likely to have been counted as single events. There likewise was a transfer of some recall domains to the Consumer Product Safety Commission (CPSC) when it was created in 1972.

The FDCA introduced regulatory letters in 1974. The regulatory letter is a formal notice to a specific person or firm alleging specific violations, stipulating compliance dates, and stating that court action will be taken if compliance is not forthcoming. The procedure notifies of an intent to seek an injunction or to undertake criminal prosecution only if there is no correction of the violation within the stipulated period of time afforded the offending party. The effect of introducing this alternative in 1974 was quite dramatic. There were 1,195 regulatory letters issued--more than in any succeeding year, it appears. The year 1974 brought a dramatic fall in court actions--from 1,350 in 1973 to 523 in 1974 (Table 4.24).

These changes toward the use of regulatory alternatives to court actions are documented further in Table 4.24 for the years 1964-1977. Strong evidence for the decline of court relative to regulatory actions is found in both Tables 4.24 and 4.25 and Figures 4.4 and 4.5. Though regulatory actions exceeded court actions by 1966, they then comprised only 58 percent of all agency actions. That proportion had risen to two-thirds (67%) in 1972 and to more than three-fourths (77%) by 1977. In recent years the use both of recalls and of regulatory letters has usually exceeded the use of court actions (Table 4.24). The proportion that court actions are of all inspections also has been declining in recent years (Table 4.24). Correlatively, there has been a substantial secular decline in the use of seizures as a remedy from 1940 to 1977 (Figure 4.5).

Figure 4.3

CRIMINAL PROSECUTION ACTIONS:
FY 1943 - 1977



SOURCE: FDA ANNUAL REPORTS FY 1943 - 1977.

TABLE 4.24

COMPARISON OF COURT ACTIONS INSTITUTED
TO INSPECTIONS MADE FOR THE FOOD AND
DRUG ADMINISTRATION, 1964-1977

FY	Inspections	Court Actions	Recalls	Regulatory Letters	Rate
1964	57,629	1,515	---	---	2.6%
1965	56,372	1,266	---	---	2.2%
1966	46,287	1,362	538	---	2.9%
1967	48,075	1,699	900	---	3.5%
1968	31,682	839	902	---	2.6%
1969	26,151	513	910	---	2.0%
1970 ¹	26,675	666	1,427	---	2.5%
1971	26,002	845	1,986	---	3.2%
1972	20,118	968	1,029 ²	---	4.8% ³
1973	43,778	1,350	1,143 ⁵	---	3.1%
1974	33,511	523	881	1,195	1.6%
1975	32,533	590	948	N/A	--
1976	32,757	326	865	982	1.0%
1977	32,733	640	890	604	2.0%

TABLE 4.24
COMPARISON OF COURT ACTIONS INSTITUTED
TO INSPECTIONS MADE FOR THE FOOD AND DRUG
ADMINISTRATION, 1964-1977 MADE
(Concluded)

Notes:

1. Program category inspections, not establishment inspections.
2. In 1972, all shipments, package sizes, and buyers labels of the product recalled were counted as one recall, and the same recall number was used to identify recalls of the product by wholesalers or repackers. There was little, if any, change in recall operations.
3. The disproportionate increase may be explainable by reference to the following information. In 1972, there were 23 seizures in the devices category; while in 1973 seizures in the same category increased to 430. The latter figure includes multiple seizures of Diapulse devices.
4. Represents establishments covered. Establishments covered more than once during the year are counted as many times as they are covered.
5. Does not include 396 recalls of hazardous products as that responsibility was transferred to the newly formed Consumer Products Safety Council.
6. Reflects the impact of the introduction of regulatory letters.

Definitions:

Court Actions = Seizures + Prosecutions + Injunctions

Rate = $\frac{\text{Court Actions}}{\text{Inspections}}$

TABLE A.25

A COMPARISON OF COURT AND REGULATORY ACTIONS OF ALL ENFORCEMENT ACTIONS OF FDCA FOR FISCAL YEARS 1966 TO 1977

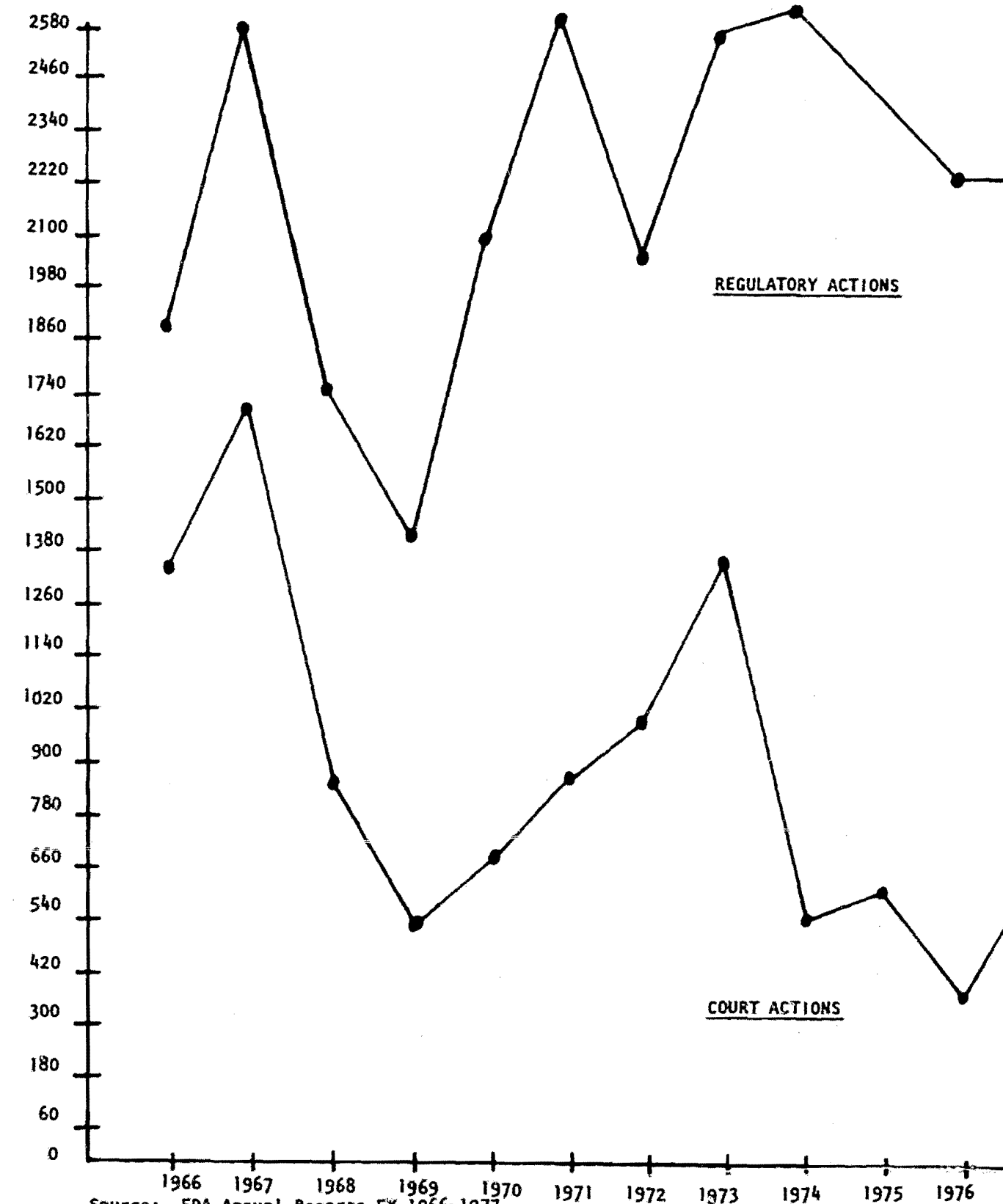
Fiscal Year	Court Actions	Regulatory Actions	Enforcement Actions
1966	1,362	538	1,900
1967	1,699	900	2,599
1968	839	902	1,741
1969	513	910	1,423
1970	666	1,427	2,093
1971	845	1,986	2,831
1972	968	1,029	1,997
1973	1,350	1,143	2,493
1974	523	2,076	2,599
1975	590	1,035*	1,625*
1976	326	1,871	2,197
1977	640	1,553	2,193

Source: Annual Reports, FDCA 1966-1977.

* The figures for 1975 do not include regulatory letters as these figures were unavailable.

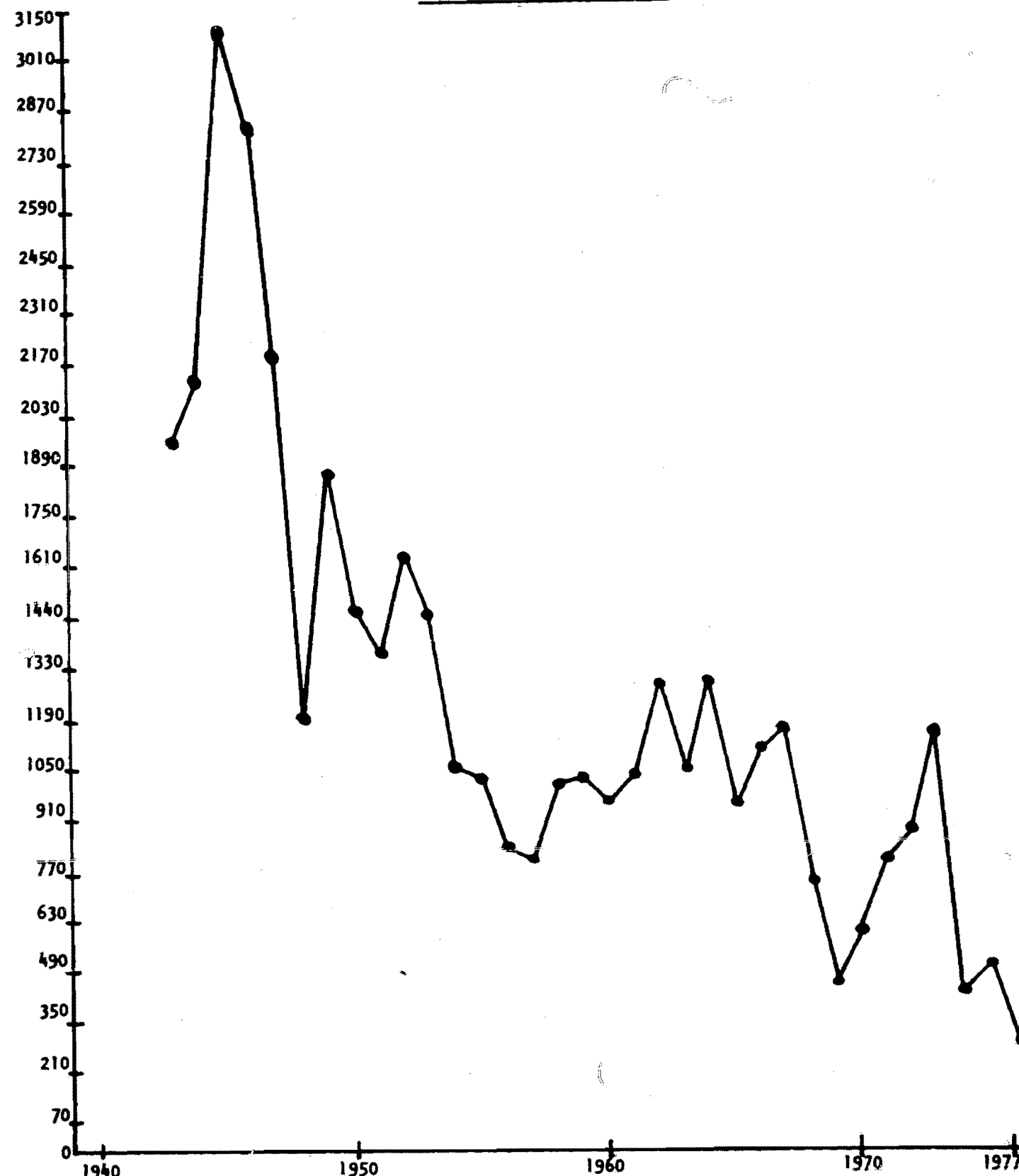
Definitions:Court Actions - seizures + injunctions + prosecutions.Enforcement Actions - court actions + regulatory actions + citations (for years 1975-1977).Regulatory Letter - an enforcement document written by the FIA to the top management of a firm, which states that legal action will be taken unless specific violative products or conditions are corrected promptly.Recall - a field correction, or removal from the market, of products which are subject to legal action due to violation of the law.Regulatory Actions - recalls + regulatory letters + citations (for years 1975-1977).Seizure - removal of goods from distribution through a court order.Prosecution - a criminal procedure against an individual and/or firm for violation of an act enforced by the FDA.Injunction - a court order which restrains an individual and/or a firm from engaging in specified violations of the Acts enforced by the FDA.Citation - the opportunity for an informal hearing to permit a firm or individual to show cause why a criminal prosecution for apparent violation of the law should not be forwarded by FDA to the United States Attorney. Note that citation is first recorded in the 1975 Annual Report; it is very similar to the Section 305 Hearing that is required to precede criminal prosecution by the 1938 Act.

Figure 4.4
COURT ACTIONS AND TOTAL REGULATORY ACTIONS
FISCAL YEARS 1966-1977



Source: FDA Annual Reports FY 1966-1977.

Figure 4.5
SEIZURES: FY 1943 - 1977



Source: FDA Annual Reports FY 1943-1977.

We were unable to find direct evidence on the third major source of exogenous variation--decisions to change administrators who in turn adopt or promote policies that affect the production of enforcement or regulatory statistics. One way to do so would be to investigate the possible effects of changes in political administrations, a perennial preoccupation of students of regulation.

Finally, we simply note again that external events may generate substantial changes in violative behavior and its reporting. The external changes are both a source of changing violation behavior and of efforts to detect and prosecute it, once detected.

The Life Course of Statistical Series

Our examination of barriers to the collection and collation of information on white-collar law-breaking and of exogenous effects on the statistical series generated by any regulatory or law enforcement agency makes all too evident that statistical information has a life course or history. Individual statistics or time series are born, change as the agency changes and as changes in their environment affect them, and then often disappear or die.

Examples of how new statistical reporting systems are born abound, and many have been mentioned in this report. But the form that statistical systems may eventually take is not necessarily set by the acts that may lead to their eventual creation. The recent legislation creating Inspector General offices in all civil departments, for example, mandated reporting requirements and thereby gave birth to a spate of semiannual reports from each of these agencies on their efforts to cope with fraud and abuse and with employee violations and complaints. Though the Congress established a mandate for semiannual reporting on these matters, no provision was originally made for statistical reporting or for any uniformity in such reporting. As a consequence, the reports, as we have shown, lack comparability. For these reasons, many of the current statistics that are reported by a given agency will disappear and new ones will emerge as reporting objectives develop and change.

Because of the "newness" of this reporting requirement, little attention seems to have been given to the creation of time series. Although occasional comparison is made with previous six month or annual periods, there are as yet no obvious instances of the birth of statistical series on fraud or abuse or of employee violations or their complaints--only a birth of discrete measures or "statistics."

Histories of Agencies as Histories of Statistical Measures. For the most part, we have found that the life course of any statistical measure is tied to its life course within a particular agency. Because of this intimate tie between the parent agency and the statistic or series, we have found no instance in which statistics or information systems are transferred in any way that assures their continued reporting when an agency is merged with another or the law transfers responsibility for enforcement or regulation from one agency to another. Indeed, even the reorganization of an agency can have substantial effects on a statistical series. The statistics on alcohol, tobacco, and firearms regulation and enforcement were substantially affected, for example, by their transfer from the Internal Revenue Service to a separate Bureau of Alcohol, Tobacco, Firearms within the Department of the Treasury.

Where an enforcement unit has spanned almost all of our nation's history, as is the case with the Customs unit of the Department of the Treasury, one can discern the outlines of the birth and death of many statistics. Even a brief history shows how difficult it is to maintain on-going series for long periods of time (Treasury, n.d.; Vincent, 1979:1-3). Responding to the urgent need for revenue, the First Congress passed, and President Washington signed, the Tariff Act of July 4, 1789. It established a tariff and a system for collecting duties. Customs districts, ports of entry, and the machinery for appointing customs officers and prescribing their duties were established July 31, 1789--one day before the Tariff Act took effect. President Washington then nominated 59 collectors of customs and more than 40 other officers to staff the new U.S. Customs Service. The entire Service was placed, as it is today, under the Treasury Department.

Even in its early days, Customs handled diverse duties in addition to collecting tariffs. Customs officers were designated pension agents for military personnel (now a function of the Veteran's Administration). They gathered and recorded statistics on imports and exports (now handled by the Bureau of the Census). Customs supervised the revenue cutters (now handled by the Coast Guard). It collected hospital dues for the relief of sick and disabled seamen (a precursor of the Public Health Service); and, in 1830, Secretary of the Treasury Louis McLane authorized Ferdinand Hassler to devise "uniform authentic weights and measures to be supplied to all Custom Houses" (presaging the National Bureau of Standards).

Today, more diversified than ever, the U.S. Customs Service, in addition to enforcing customs statutes, enforces more than 400 provisions of law on behalf of 40 other Federal agencies. Many of these provisions pertain to environmental issues and to the quality of American life.

These discontinuities in the history of agencies originating in the U.S. Customs clearly had an affect on any statistical information about them that was developed by Customs. When the functions were transferred or simply assumed by the creation of new agencies, information ordinarily was not systematically organized for transfer. Even where mandates have remained with the U.S. Customs since its inception, we cannot trace any statistic over time that relates to its obligations to enforce the law. The only statistic that can be generated over this entire period of time is information on revenue from custom duties (see Figure 4.6).

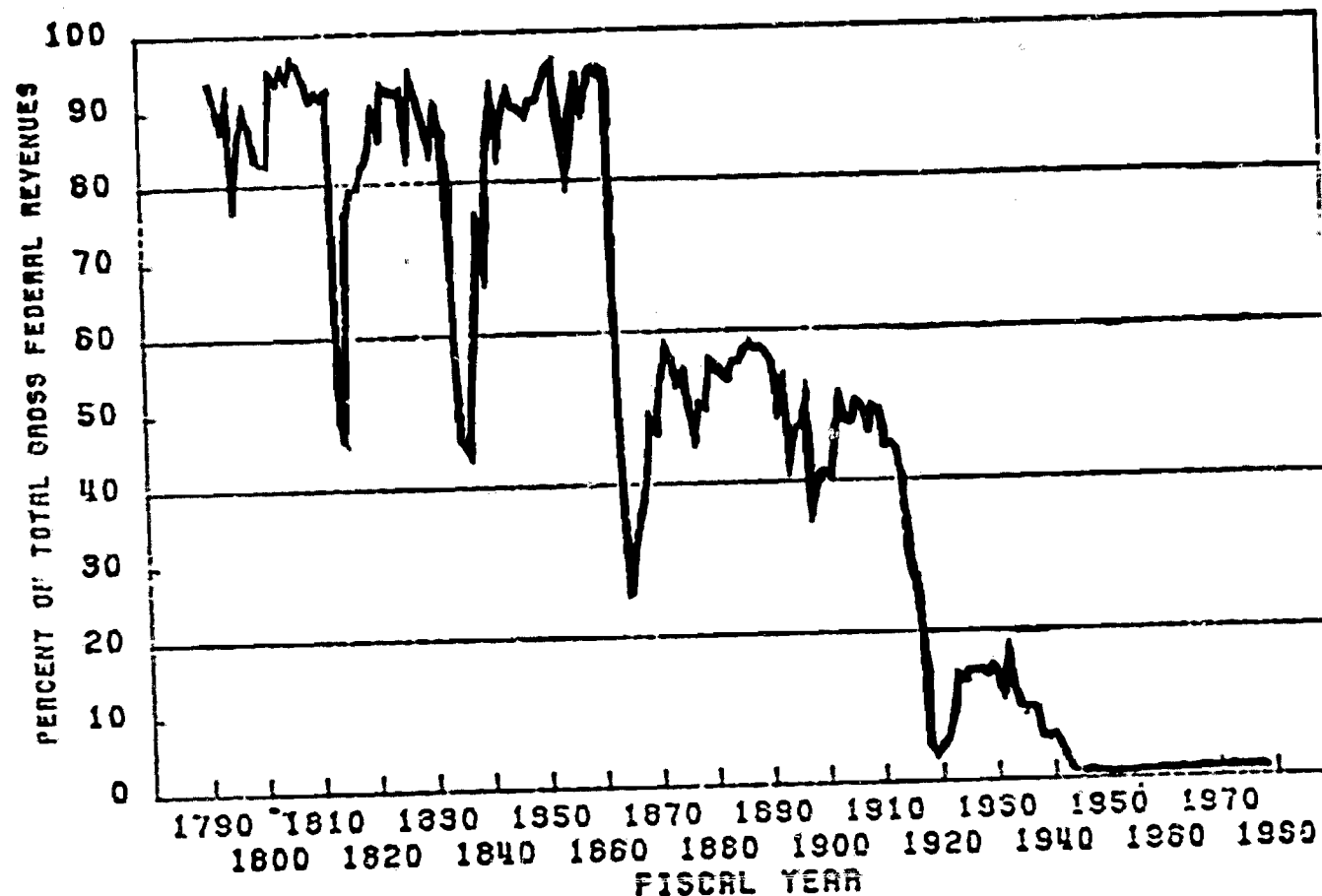
For a variety of reasons, most Customs statistics that are immediately relevant to white-collar violations of law are of relatively recent origin. This is not to say that the periodic reports of Customs did not make reference to the fact that some statistical information relevant to law enforcement was being kept. Vincent (1979:26) notes, for example, that even the 1790 report refers to the collection of fines, but there is no record of amounts until 1808. The first statistical information on Customs seizures comes in 1867, and there has been regular reporting on seizures since then. Not until recent years, however, was there information on kinds of seizures and their estimated value (Vincent, 1979:27). Most statistics relevant to seizures, however, are not germane to white-collar violations of law, e.g., those related to illegal importation of illegal drugs.

Only the reports of investigative activities in more recent years provide the kind of statistical information that is relevant to white-collar law violations, as these reports present some detailed information by type of law violation. At the present time, we do not know whether comparable information can be had for earlier years, but it seems apparent that such information, if still available in collection records, could only be used if it were coded from collection records. Even the changing importance of custom revenues as a proportion of all revenues as shown in Figure 4.6 cannot be generated any longer by Treasury primarily from Customs sources. Today there not only are a diversity of sources of revenue but the Bureau of Internal Revenue is our primary source of data. It is Treasury then that collates information on sources and amount of revenues but not information on revenue enforcement for these same internal units.

Even an agency like the Bureau of the Census, whose primary responsibility has been the collection of information about the inhabitants of the U.S., has difficulty constructing historical series for its own information. Changes in census definitions, procedure, and demands for information continue to give rise to new series and the modification and abandonment of old ones.

Figure 4.6

CHANGING CONTRIBUTION OF U. S. CUSTOMS REVENUES TO ALL
U.S. REVENUES, 1792 to 1977.



SOURCE: Statistical Appendix to the Annual Report of the Secretary of
the Treasury, 1978 (Table 2, Receipts and Outlays).

How difficult it is to construct long term series is evident through an examination of Historical Statistics of the United States: 1789-1945 (1949) and subsequent editions. Even the construction of statistics on immigration by country is no simple matter to assemble. The INS was not established as a separate bureau until the act of March 3, 1891 (26 Stat. 1085); statistics on immigration prior to that time must be assembled from different sources. It is instructive to see how difficult it is to assemble immigration statistics by country of origin, given the tendency of nation states also to be born and reconstituted over the period covered by the period 1920-1945 (1949:Series B 304-330).

Regeneration and Rebirth of Statistical Series. Given the close and intimate tie between an information system of an agency and the agency's operations, it is difficult to transfer information. The cost of moving information to another agency when a function or responsibility for a program is transferred rarely is provided for in the reorganization of agencies or the transfer of their function. Statistical series and statistics, therefore, often die when an agency's functions are transferred to another or when it is absorbed by another agency. The demand for certain kinds of information is sufficiently strong, nevertheless, so that the new agency or the new home for an old function begins to generate the same or similar information. This regeneration of statistics would not be a serious matter were it not for the fact that the information lacks the comparability essential to its incorporation in a statistical series or for comparisons over time.

Statistics on white-collar law-breaking are subject to additional constraints when agencies or their functions are dispersed or reconstituted. The main reason is that most of the statistics that are of interest to us are produced by enforcement and regulatory detection and processing systems. Even when personnel are transferred, the reconstituted agency or the reconstituted program is subject to new information, operating, and resource constraints and allocations--matters that affect the production and comparability of information.

We have already illustrated how the FDA has lost responsibility for certain enforcement functions over time and how these have led to changes in FDCA time series. The movement of FDCA's Bureau of Drug Abuse Control to the Drug Enforcement Administration in the U.S. Department of Justice is a case in point. While FDCA ceased to report on violations of "drug abuse," DEA began its reporting system without incorporating information from FDCA or other agencies from which it had similarly assumed responsibility for enforcement. We lack, therefore, DEA time series on drug enforcement that can be used prior to their birth as an

agency in 1973. Such a lack perhaps is more consequential for ordinary than white-collar crime series. But FDCA's transfer of pesticide control to EPA is more consequential for series on white-collar law violations.

Occasionally the transfer of information to new agencies does not result in the disruption of information in time series. This is more likely to be the case when entire bureaus or agencies are absorbed more or less intact into a new or existing agency than when only part of a functional area is transferred. An example of agency absorption where it appears that the information bases have been transferred more or less intact is provided by the creation of the Mine Safety and Health Administration (MSHA) in 1978 by merging enforcement functions formerly divided between the Bureau of Mines--responsibility for mine safety--and the Mining Enforcement and Safety Administration--responsible for safety and health--and previously located in the Department of the Interior. MESA was absorbed in large part into MSHA and given responsibility for the safety and health of the mining occupation, while the Bureau of Mines now has responsibility for safety research. Although these shifts have created minor problems for the collection and reporting of information on mine health and safety, the movement of personnel and the development of a central information system in Denver, Colorado using the MESA data base permits MSHA to continue to report information reported by MESA. The number of such MESA series are limited, however, and changes in the number of inspections may render them of even less utility.

Structural Provision for Assessing the Accuracy of Information. There are a number of ways that enforcement and regulatory agencies provide for checks into the accuracy of the information collected and processed. Among them are the use of training and of supervision or monitoring designed to increase personnel motivation and skills to produce reliable information. There are also structural and procedural means for increasing accuracy, such as standardizing classifications and reducing discretion in classification. We will give immediate attention here, however, to formal provisions an agency may make for assessing the accuracy or reliability--and occasionally the validity--of the information it collects, processes, and reports and for deriving specific measures of accuracy or error by these means. Such assessments of accuracy and the measures obtained from them are critical elements in determining to what use the information may be put.

While administrative records are generated as by-products of normal agency functioning, audits normally are deliberate attempts to produce information about something further concerning the agency's behavior, or of its relationship to some environment. We shall call the ways

that an agency provides for assessments or measures of the accuracy of information a form of audit. Just as there are audits designed to detect violations or to determine compliance with standards, so there are audits to assess the accuracy of the information collected, processed, and reported. We shall examine five major forms. Audits may proceed by: (1) varying the independence of the auditor; (2) varying the independence of the means of auditing; (3) varying the independence of the source of the information; (4) repetition of the same procedures; and (5) by analytic statistical methods. We shall briefly illustrate the use of each of these means and then turn to some limits of current means for assessing the accuracy of information by these forms.

Independent Auditor. There is no systematic provision for varying the auditor of any given agency's information even though auditors are quite often varied for inspection or audit system that are designed to detect violations or to insure or document compliance. The Inspectors General of a number of agencies report using contract systems of audit and inspection. The Inspector General of the U.S. Department of the Interior, for example, reported that for the six-month period ending September 30, 1979, the Department has issued 358 audit reports--36 on internal and 322 on external audits of contractors, grantees, and lessees. Sixty-eight percent of the external audits (219 of 322) were performed for Interior on a reimbursable basis by other Federal agencies (Defense Contract Audit Agency and Department of Health, Education, and Welfare), and by state auditors and independent public accountants (Interior IG, 1979:11). The Inspector General of the Department of Labor likewise reported extensive use of outside auditors to conduct a large portion of its audits (DOL, IG, 1979:16) as did the IG for HUD (IG, 1979:Appendixes 1 and 2). Despite the extensive use of internal and external auditors in these detection and law enforcement contexts, we were unable to find any evidence for use of external auditors to assess the accuracy of detection and law enforcement information, except where it came as a by-product of some independently run sample survey.

Within the Federal system, the independent auditor role has fallen almost entirely to the Comptroller General of the United States and the staff of the General Accounting Office. GAO reports rarely undertake a systematic assessment of the information produced in an information system but its reports frequently provide information on kinds of inaccuracies in information systems and some guess as to what the ranges of error might be (though the statistics providing the "informed guesses" are unlikely to be produced in a way that permits one to reliably estimate the range or magnitude of errors).

Independence of the Means or Procedures of Audit. There is occasional use of an independent means of determining the accuracy of information in a system of information related to white-collar law or to the use of independent procedures to produce the same information. The means are used largely to assess accuracy in data collection, particularly the accuracy of counts of information in the initial points of collection or recording. Such independent procedures may be linked to compliance or enforcement objectives, as well as to assessing the accuracy of information. Our sense is that the measures of accuracy are either essential to the independent procedure, a means to aid law enforcement objectives, or they are a by-product for some other reason. Rarely are such procedures used to determine the accuracy of information for statistical reporting or research policy objectives.

We shall illustrate only briefly the use of procedures and means as ways of assessing the accuracy of information.

The Taxpayer's Compliance Measurement Program (TCMP) of IRS relies on the use of different sample surveys, a procedure for collecting information that is independent of IRS's use of the self-report by taxpayers (or their surrogates who prepare the return) to gather tax information. One of the TCMP surveys is designed to determine noncompliance with the requirements to file a tax return. That measure of noncompliance, of course, can at the same time be treated as a measure of the accuracy or completeness of the count of eligible taxpayers or of filings by comparison with actual filings.

Sampling also may be seen as one of a number of alternative and useful means to assess the accuracy of information. Another set of TCMP surveys, for example, uses a sampling design to select tax returns for an intensive audit by both accounting and verification methods. The audit of each return provides some measure of the accuracy of information on the return but an estimate of the accuracy for all returns filed depends upon the use of a sample design and sampling theory of estimation.

Modern EDP or ADP information systems do quasi-independent checks of the accuracy of information that is entered into the information system. Normally, programs are designed to "correct" the information entered into the system, primarily as a means of eliminating inapplicable codes for information but also to check the agreement among items that have some of the same subcategories. We found such checks were used in every automated data processing system from which we acquired information. This kind of measure of accuracy was illustrated in reporting on the accuracy of information on prison term and sentencing

information for the data file of the Administrative Office of the U.S. Courts file (Weisburd, 1979:2). Unfortunately, such computer-developed information normally is used only to correct information in a file rather than, to derive at the same time, some measure of the accuracy of coding information, e.g., a minimal estimate of inaccuracy.

Independent Sources of Information. When there is an independent source of information on the same phenomena or an independent estimate or set of estimates, one also has a basis for assessing the accuracy of information. There are several conditions under which this occurs.

Where information derives from a single source, one that is independent of the collection agency, but nonetheless is the source of the information for the collector, the original source may be used as an independent means for determining the accuracy of information. An example of this is provided in an early practice of CPSC in its NEISS information system. The information in NEISS on product-related injuries derives in the first instance from reports by victims, or persons who are in some relationship to victims. The hospital emergency room staff collects information from these sources to report to the CPSC information file. At one time, CPSC sent a copy of the hospital information form to the victim for verification of the information. Where there were discrepancies, it appears that the victim report information was substituted for the hospital report if the victim had to be the hospital's source of information. Victim reports also were used to supplement or provide missing information from the hospital report. One gains the impression that the NEISS information system never provided any systematic reporting of the accuracy of information based on this independent source or check on the accuracy of information, since we are unable to find reports of the levels of agreement between hospital and victim reports. Thus the potential use as a measure of accuracy may never have been actualized--only its operational use to correct and supplement information in the file was exploited.

Previously we pointed out how two agencies--the FAA and NASA--produce independent estimates of midair near collisions (NMAC's). (The two agencies are not quite strictly independent, since NASA secures much of its budget for its Aviation Reporting System from FAA.) The two systems were deliberately designed to provide independent means, as well as independent estimates, of the same thing, but, as we noted, controversy now surrounds their use as a measure of accuracy or agreement. Given substantial lack of agreement, the difference is attributed by FAA to NASA's use of a different means for determining the occurrence of a "near midair collision."

The mix of independent means and independent sources for producing a measure of reliability for the same statistic will always seem to involve this difficulty of determining what is the major reason for a lack of agreement, since the design ordinarily does not permit one to assess the effect of independent means separately from that of independence of source.

Repetition of the Same Procedures (Replication). The most common means used in both research investigation and in agency reporting systems to determine the accuracy of information is some form of exact replication of the procedural transfer and transformation of information. This occurs in many ways and accuracy can be assessed by diverse means, some of which are related to a particular procedure of replication.

Replication is likely to be used to assess the accuracy of information at some stages of data collection and information processing and not at others. The most common form of replication is for the coding or classification of information and the reporting of measures of the reliability of coding each item. Such studies generally show that reliability decreases as the number of categories for an item increases and as the number of criteria to define a member of a class increases. While there is evidence that some of the enforcement and regulatory agencies test the reliability of coding information, the practice is far from common. No provision ordinarily is made for continuing replication tests of reliability in coding information.

Less common, though by no means infrequent, is the provision for replication of a means of detection or compliance. There are replications of inspections or monitoring forms in a number of government agencies, e.g., FDA, NRC, EPA, and CPSC--though the extent to which a model of exact replication is carried out in field inspections is unclear. Where such replications are institutionalized, they ordinarily are defined as features of the enforcement or regulatory process that require attention rather than as measures of the accuracy of information and its use. To be specific, such measures are not used to qualify the accuracy of information on any violation in a legal proceeding but to determine whether the procedures need to be changed or "improved."

Exact replication of the data collection process is rarely, if ever undertaken, though it might provide very interesting information on the accuracy of information as it is accessioned by an agency.

Statistical Methods. We simply call attention here to the fact that there are statistical models for estimating the accuracy of information. Such models, as noted earlier,

tell something about the nature and sources of error in information systems. They also provide ways to determine the relative magnitude and contributions of errors and the effect that unreliability may have upon measures of validity. Very little attention is paid to such matters in law enforcement and regulatory agencies except in an occasional and highly technical report prepared for a special purpose. The IRS special study of Estimates of Income Unreported on Individual Income Tax Returns (1979) is an example of attention to the accuracy of estimates and of basic data sources.

The absence of statistical models and methods from the collection, processing and reporting of information on matters related to white-collar violations of law stems perhaps from the role that information plays in these agencies. We have observed on several occasions that the production of information for statistical reporting is not defined as a central task or mission of such agencies nor is such information regarded as having much utility apart from meeting certain informational demands of the public and of legislative or executive constituencies. For that reason, the processing and reporting of information in an enforcement or compliance agency typically is assigned to persons whose expertise lies in the production and retrieval of information--computer hardware or software managers--rather than to specialists in the production of analytical reporting. Where analytical utility is a major use, matters of the accuracy of information are more central.

Some appreciation of how the organizational purpose and structure of enforcement and regulatory agencies lead to a lack of emphasis on the quality of data and in quality controls over its production (particularly of its uses in statistical reporting) can be gleaned by comparisons with agencies where the primary purpose is data collection--the Bureau of the Census, for example--or where the primary purpose is the analysis and reporting of information--the Bureau of Labor Statistics, for instance. Both of these agencies are organized to pay attention to the quality of statistical information and its reporting and to devote considerable resources to the control of quality of data and the effects of inaccuracy on statistical counts, estimates, or measures, such as indicators and indexes. These agencies likewise create special units with a responsibility for developmental work that enhances the quality of data, the accuracy of statistical measures, and the analysis models.

Problems in Determining the Accuracy
of Information in Regulatory
and Enforcement Agencies

Assessing the accuracy of information is perhaps a more complex matter for agencies where the information must serve different management purposes than in ones where the primary or sole intent is the production of knowledge. Few agencies have as their principal goal the production of knowledge, though that goal is characteristic of certain units within federal executive departments such as the National Institutes of Health or the National Center for Health Statistics in the U.S. Public Health Service and the Institute for Basic Standards of the National Bureau of Standards, U.S. Department of Commerce, or of independent agencies such as NASA. Where production of knowledge is the goal of an agency, a great deal of attention is given to the measurement and control of error related to the actual production of knowledge and to its use in scientific inference.

Where law enforcement or regulatory goals are primarily responsible for the production and use of knowledge, the quality of information is not only less salient to the organization but other goals of the organization also complicate measurement and control of data quality. This is so not only because there are important trade-offs between data quality and data utility at a given cost, but also because operating goals or procedures may actually preclude measurement of accuracy or the use of certain methods in measurement. Problems arise, such as how one separates out the sources of error, when they are controlled. Where deliberate distortion exists with random error, one may be able to show that the error does not fit stochastic models and yet be unable to acquire the information necessary to partition error to different sources, such as deceit, errors in classification, and so on. Likewise, the exercise of discretion at the point of accessioning cases makes it difficult to determine the accuracy of information influencing the discretionary choice. Where the determination of accuracy and control over the quality of information depends upon operating as well as integral procedures, special problems of measurement arise.

How difficult such matters can be may be illustrated from reports of efforts to account for discrepancies between actual and expected quantities of nuclear fuels--a problem that involves accurate measures of sources of loss in nuclear fuels. A GAO study of a "missing 24 pounds of plutonium" at DOE's Savannah River nuclear fuels reprocessing plant brought forth replies from the Department of Energy that it could not account for the loss of that amount from 1976 to 1978 though "it does not believe any of the plutonium was stolen or sold on the international black

market." (The Washington Post, January 18, 1980). The "loss" is attributed to the fact that there are miles of pipes carrying dissolved plutonium and spent uranium fuel and a conclusion that some of this material adheres to the piping. Just how the logic of inferential models entered into that conclusion is evident from the statement: "Just a coating of less than one hundred-thousandth of an inch on the interior walls of the pipes would account for the entire plutonium difference at Savannah River." (The Washington Post, Friday, January 18, 1980). In a scientific set of experiments the adherence could be measured in such a way as to provide estimates based on actual observations rather than upon presumption of fact and inference. In any case, we use this example to demonstrate that an operating agency cannot easily distinguish violation of law from other sources of explanation for a discrepancy in independent counts--in this case the amount of a substance that should be present in a nuclear fuels reprocessing plant.

Agencies, given their objectives, come to be interested in some kinds of error more than others since errors have different costs to an agency, depending upon its mission. The IRS, for instance, is less interested in over- than under-reporting of tax liability for the quite obvious reason that one increases while the other decreases revenue. The cost of detection of under-reporting can be traded-off against revenue recovery while it must be treated as a non-offset cost where there is over-reporting. Long (1980) regards this as seemingly the reason why TCMP has no special procedures for detecting over-reporting. Even using the procedures designed with detecting under-reporting in mind, she finds considerable TCMP evidence for over-reporting income from wages and other sources (1980:3, 16).

Summary

There clearly are substantial barriers to the collection and collation of information for the construction of time series on white-collar law-breaking. The main barriers to the development of time series arise from the lack of uniformity in data collection among different agencies that contribute to a violation series and to the inaccuracies in the information for any single agency. Substantial problems arise also because there are many sources of variation over time in the production of information for a time series. Particularly disconcerting, also, is the fact that most statistical reporting does not distinguish among individual and organizational offenders. Information on victims generally is lacking.

These problems may appear to be less important for studies of white-collar offenses that use a cross-sectional design. To some extent that conclusion is misleading, however, since the sources of impact on time series clearly

have their impact in any cross-section as well. Indeed, without longitudinal data or time series, one cannot detect as easily how problems affect cross-sectional data. It is quite common, moreover, to test hypotheses that have causal formulations. Causation requires overtime or sequential data of the sort that often are not available in a limited cross-section for an agency. To the degree that one collects the information from an agency over time, treating it as a cross-section sample will only hide the sources of variability and error.

There are ways, of course, that one can utilize the information produced by individual agencies to learn more about white-collar law-breaking and its effects. We have suggested that tests be made for the accuracy of the information and for taking errors into account in testing hypotheses. We likewise suggest one search for potential exogenous sources of variation. Above all, the development of both theoretical and administrative models that explain over-time variations in information on white-collar violations of law will be helpful in assessing the quality of information as it may be applied in research, administration, or for public policy formation.

Change in Information Technology and Technique

The development of technology and technique for dealing with information has been a fundamental source of change in every aspect of statistics pertinent to our present topic. There is no need here to discuss elaborately how the development of computer technology has revolutionized the field. This includes the elaboration of software not only for doing various conventional operations with data but also for extending practice to embrace new treatments and uses of data that were not previously even entertained. It includes also extensive developments in the field of statistics. At the present juncture, the rapidity of the development of information technology is also so great that the problems are largely one of adoption rather than innovation. Agency statistical practice generally lags far behind the state of the relevant arts.

Nonetheless, the rate of adoption of new information technology has become unprecedentedly rapid and technological change is perhaps the major source of effects on the data of interest here. Phrases such as "The Information Society," "The Information Economy" and "The Information Revolution" have become bromidic characterizations of the contemporary world. Since the very effort on which we embarked here is one small part of the developments that lead to such phrases, it would be incongruous for us to belittle them. The transformation of the roles of information in society is what brings projects

such as the present one into being. The difficulties it confronts in realizing its purpose stem from the proliferation of data on the topic of interest, the greater importance attached to the utilization of systematic data, and the lags of social and cultural adjustment to "The Information Evolution."

Throughout this report, attention is called to grave defects of organization, procedure, and conception that make scant value for any statistical use much, indeed most, of the mountains of data on white-collar violations that are collected by the federal government. We also identify many unexploited opportunities for developing useful statistical series. This may lead readers of this report to conclude that our orientation is hopelessly unrealistic, for to act on our explicit and implicit recommendations may seem to require both multiplying the federal fiscal deficit and revolutionary reorganization of its modes of operations. In truth, we ourselves see scant early prospect of substantial remedy for many of the problems we identify or realization of many of the ideal objectives we posit. Nonetheless, we do not regard the present work as an ideal, utopian exercise. Many of the kind of improvements recommended here are not nearly as costly as they appear to be and, to the contrary, would involve, property reckoned, in cost-benefit terms major economies over present practices.

One of the central problems of adaptations to "The Information Economy" is that economic concepts, formal and popular, that have origins in a "meat and potatoes" economy are those we are habituated to use. Those concepts are severely strained in application to information, generally, and more particularly, to information in the public sector. We have extremely poor tools for establishing values for either the costs or benefits of information, although it is generally believed, perhaps erroneously, that it is easier to establish costs than benefits. (See National Academy of Sciences, National Research Council, Setting Statistical Priorities, 1978, for a partially contrary view.) Information is not inclined to behave as do many other "commodities." Externalities abound. Indeed, more cost usually is external than internalized in a large part of all the kinds of statistical activities under consideration. Curves of marginal cost, of demands, or of most other functions slope in unaccustomedly perverse directions for application of conventional economic models. The special economic characteristics of information also form one reason why the suggestions made here may be less utopian than they appear. For example, price index change in the information technology area in recent years has been moving as radically downward as general price indexes have been moving upward. We would venture the more radical proposition that there is an extensive degree of spuriousness to measures of inflation (and of investment and productivity) in that the measures

used are not geared for taking into proper account the extensive shifts toward information as both input and output of economic activity. [This example, incidently illustrates (a) the high dependence of our society upon statistical information; (b) the high cost that may be associated with bad information; (c) the difficulty of assigning quantitative values to the cost/benefit ratios of statistical information of broad social import.)

That the values of information are not visible to many systems of economic accounting does not make them totally invisible to all processes of social decision. The impetus toward change and investment in improved information is quite intense. Although criteria for linking the values of information to those of general economic valuation are tenuous, the internal criteria of information systems are fairly clear and establish their own imperatives: these are criteria such as truth and falsity, accuracy and inaccuracy, reliability and unreliability, systematic or random bias, and fit or lack of fit, sampling efficiency and inefficiency, and many others. At the same time, the technology, hard and soft, for pursuing these imperatives ever more efficiently grow apace. Change in statistical sources is endemic.

V. TOWARDS A GENERAL SYSTEM OF INDICATORS FOR WHITE-COLLAR VIOLATIONS OF LAW

SOCIAL CONTROL BY SOCIAL INDICATORS

Statistics are important for social control because they inform, enlighten, and engineer control decisions. In the nature of the case, however, no statistical information exists except in terms of some socially organized way of knowing. "Concepts, definitions, quantitative models, and theories must be adjusted to the fact that the data are not some objectively observable universe of 'criminal acts' but rather those events defined, captured and processed as such by some institutional mechanism" (Biderman and Reiss, 1967:1). The potential power of information depends substantially upon those who produce it and upon their modes of production.

Not long ago the economist F. M. Scherer observed that: "good statistics are needed" for both government and self-regulation of activities (1979:1). "The better informed the public is about the operations of industry," he noted, "the more likely industry is to regulate itself in the public interest." He concurred with Justice Louis Brandeis that: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." (1979:1)

Speaking from two years of experience as an economist with the Federal Trade Commission Scherer went on to note:

"Information is power, and it is power that in the first instance is asymmetrically distributed. The business firms who are the subject of regulation possess it, whereas government regulatory agencies and the general public are almost totally dependent upon the regulatees for it. Recognizing this, businesses pursue three principal strategies to maintain that asymmetry. First, they stonewall. They use every legal device at their disposal--and there are many--to delay, or if possible to thwart altogether, the transmission of statistics that would give power to potential regulators. Second, when the opportunities for delay have been exhausted, they attempt to negotiate data specifications that either curb to the maximum possible extent the amount of insight provided into their operations, or confer upon the regulators as little discretion as possible to take new performance-impacting initiatives. And third, they seek to negotiate data dissemination guidelines that keep the statistics in as few hands as possible--ideally in the hands of those who have no power to use the data or

whose use can be controlled, e.g., by lobbying for friendly staff and regulatory commission appointments." (1979:2).

Scherer acknowledges this is a cynical view. Yet it is one that might well be restated from the standpoint of a public seeking information from its government, another testimony to the power of information.

The potential power of statistical information affects both its production and its use. Statistics arise as information not only in the process of exercising social control but also to exert control. Any attempt to develop a general system of indicators of white-collar law violation must bear in mind that such a system must depend in large measure for the foreseeable future on their collection by agencies of social control. Yet it would be unwise, as Scherer calls to our attention, to neglect the fact that quite often the control of the information lies with the controlled rather than the controllers. Any general system hence must also take into account how those who are controlled or regulated affect the quantity and quality of information.

Variation in Socially Organized Ways of Knowing a Statistic

Previous chapters have called attention to sources of inaccuracy in information on white-collar law violations, and we have pointed to ways that particular information is affected by an organization's mandate and the methods used to acquire and process information. Much less is known about the ways that the regulated or controlled affect the quantity and quality of information. Our attempts to assess the problems and prospects for a general system of indicators rests more firmly upon our knowledge of how regulators develop and process information than upon how the regulated affect it and upon how enforcement agents determine the kind and the accuracy of information than upon how those upon whom the law is enforced affect it. This is a severe limitation, and it rests on, among other things, notions about the relative power of controllers and controlled in producing and using information.

Production of Information By The Regulated and Controlled

From time to time we shall note in this chapter how the lack of information from the original point of "fabrication" (i.e., production) of a statistic imposes constraints on developing a more general system of indicators on white-collar violations of law. To illustrate

the significance of this omission and the problems it can generate in the production of information, we provide an illustration from information on taxpayer compliance.

One of the major problems in tax investigation and enforcement is to determine when deductions from income are correct or in error, and when in error, whether that error is intended or accidental. At stake is whether a matter is to be treated as a mistake or a violation of law.

Routine checks of a taxpayer's return may determine simple arithmetic errors, whereas a routine audit of a filer's return and supporting records may determine discrepancies between amounts reported and those derived from the records. For some cases, no supporting records are available, which gives rise to questions about whether there has been a bona fide deduction. Further investigation based on records other than those supplied by a filer may disclose additional discrepancies. A problem for tax auditors is to determine whether such discrepancies are intended or accidental and to refer matters where there is a reasonable presumption of fraudulent intent for possible investigation. Normally, however, discrepancies will be treated as matters of error. Where payment is due, an amount is assessed to cover at least the amount by which the tax was underestimated.

The extent of such errors is not easily estimated and a determination of whether a violation has occurred is even more problematic. Moreover, even the belief that a violation has occurred may be an insufficient threshold to lead to its investigation for possible civil or criminal violation of law. The cost of investigation normally precludes pursuit of matters that may be more readily settled by recovery through payment of taxes owed and any penalties attached thereto. The knowledge of intent to defraud, if it exists, lies, of course, with the taxpayer filing the information; it is for others to discover that intent or to allege it occurred and thereby shift some of the burden of proof to the filer.

There is considerable variation, however, in the extent to which a taxpayer can control the records that constitute proof of the bona fide nature of the deduction or keep track of deductible matters. Moreover, simple arithmetic errors increase as the number of items eligible for deduction increase. Who prepares the return, moreover, can affect the kind and amount of error, e.g., whether prepared by the taxpayer or with the assistance of IRS or a private firm.

A recent GAO review of a TCMP study of casualty and theft loss deduction (1979) provides an interesting example of the difficulties inherent in using tax returns either to

estimate theft loss deductions (ordinarily a form of common crime) or in determining whether discrepancies in reporting losses represent violations of law or errors in reporting.

The TCMP study estimated the frequency and amount of discrepancy or error for each line item on individual returns filed for tax year 1973. Taxpayer error was 64 percent for filing casualty and theft losses; only medical expense deductions had a higher rate of error (GAO, 1979:57). Table 5.1 reproduced from the GAO report shows the frequency of error by filing status and adjusted gross income (AGI) class. In general, the higher the adjusted gross income, the higher the level of taxpayer compliance with respect to casualty and theft loss deduction. This finding suggests that the education or other status attributes of the filer may affect error. Yet a crude measure of that in Table 5.2 shows that receiving IRS or paid assistance in preparing the return had no effect on the relative frequency of error in casualty and theft loss deductions on 1973 individual tax returns.

IRS estimates of average amounts in error are provided in Table 5.3. In general, higher incomes show greater average dollar amounts in error. Since no standard deviations are reported, it is difficult to determine the adequacy of the mean for purposes of comparison among groups. On the whole, the amount of tax lost through such "errors" probably lies above the mean for common theft at each income level, though not substantially so. An average "error" of \$488 for persons or families with incomes under \$10,000--recognizing that these are not actual but adjustable gross incomes--ordinarily reflects a tax loss of no more than \$100. Given the recovery values, such matters are unlikely to be treated other than as taxes owed if they were discovered in a regular audit (TCMP audits are not specifically intended for detection and enforcement in the individual case).

TABLE 5.1

ESTIMATED FREQUENCY OF ERROR IN CASUALTY AND THEFT LOSS DEDUCTIONS ON 1973 INDIVIDUAL RETURNS BY FILING STATUS AND AGI CLASS

Filing status and AGI class	Number reported ¹	Number in error ²	Percent in error
1040A2 plus nonbusiness and Schedules C & F - under \$10,000	441	345	78.2
Nonbusiness \$10,000 - \$50,000	1,259	815	64.7
Schedules C & F - \$10,000 - \$30,000	214	95	44.4
Schedules C & F - \$30,000 and over	48	20	41.7
Nonbusiness - \$50,000 and over	41	15	36.6
Total	2,003	1,290	64.4

¹Includes number not reported but established per IRS examination.

²1040A returns not claiming the casualty and theft loss deduction for which the deduction was established upon IRS examination.

Source: Report of the Comptroller General of the United States. The Personal Casualty and Theft Loss Deduction: Analysis and Proposals for Change. Government Accounting Office, December 5, 1979.

TABLE 5.2

ESTIMATED FREQUENCY OF ERROR IN CASUALTY AND THEFT
LOSS DEDUCTIONS ON 1973 INDIVIDUAL RETURNS FOR
TAXPAYERS RECEIVING IRS OR PAID ASSISTANCE

	Percent of all taxpayers who claimed the deduction	Number reported ¹	Number in error ¹	Percent in error
IRS assistance ²	2	34	22	65
Paid assistance	55	1,102	702	64
Total	57	1,136	724	64

¹Includes number not reported but established per IRS examination.

²IRS walk-in or telephone assistance received as indicated by a stamp on the return.

Source: Report of the Comptroller General of the United States. The Personal Casualty and Theft Loss Deduction: Analysis and Proposals for Change. Government Accounting Office, December 5, 1979.

TABLE 5.3

ESTIMATED AVERAGE DOLLAR AMOUNT OF THE CASUALTY AND THEFT LOSS DEDUCTIONS
CLAIMED IN ERROR ON 1973 INDIVIDUAL RETURNS BY FILING STATUS AND AGI CLASS

Filing status and AGI class	Number in error ¹	Amount in error ¹	Average amount in error
1040A ² plus nonbusiness and Schedules C & F - under \$10,000	345	\$168,452	\$488
Nonbusiness \$10,000 - \$50,000	815	330,287	405
Schedules C & F - \$10,000 - \$30,000	95	43,779	461
Schedules C & F - \$30,000 and over	20	27,672	1,384
Nonbusiness \$50,000 and over	15	16,357	1,090
Total	1,290	\$586,547	\$455

Source: Report of the Comptroller General of the United States. The Personal Casualty and Theft Loss Deduction: Analysis and Proposals for Change. Government Accounting Office, December 5, 1979.

¹Includes number/amount not reported but established per IRS examination.

²1040A returns not claiming the casualty and theft loss deduction for which the deduction was established upon IRS examination.

The higher the adjusted gross income level, the larger the average dollar amount of the casualty and theft loss deduction claimed in error.³

³ Such averages were computed using statistics provided in Statistics of Income 1974, Individual Income Tax Returns, IRS Publication 79 (10-77), p. 96.

Recognizing the difficulty of determining the nature and source of the discrepancies and the diverse organizations involved in keeping records, preparing tax returns, and assessing the discrepancy, the GAO report concluded (1979:61):

"The evidence is that the personal casualty and theft loss deduction provision is inherently unadministrable in an evenhanded manner. Whatever tax relief is afforded by the loss deduction is erratic and unrelated to financial capacity to pay an income tax. The provision lends itself to fraud by those taxpayers who claim the deduction with no substantiation. It lends itself to abuse by all taxpayers who claim the deduction for loss of value unrelated to the occurrence of a casualty or theft loss event. The administrative difficulties involved in enforcing the provision far exceed whatever small tax relief may be afforded in particular hardship cases."

This example from tax enforcement, to remind our readers, was intended to illustrate how the behavior of persons that originally constitutes the information introduces problems for the enforcement agency in defining, interpreting, reporting, and enforcing whether there has been compliance with the law. It may also demonstrate that what constitutes a violation of law may derive from a particular system of definitions and practice in tax accounting by an enforcement agency and the opportunities this system affords for different persons and organizations to complicate the statistics of tax enforcement and reporting (which indeed it may). Under these circumstances--where substantial control of information resides with the original producer of information--it is not surprising that the tax authorities resort to simple recovery or settlement where they have the authority to claim what is owed the government, leaving contest of such matters to the original producers. In that settlement system, intent and accident are treated as one and the same and it is not possible to separate violation from simple default or error. That decision to seek settlement, then, lies as much with the external systems of accounting and reporting as with IRS's system for organizing reporting by tax filing. It follows that the capacity of original producers to control the quantity and quality of information necessary to regulation or law enforcement is a powerful influence on what matters may be treated as white-collar violations in the data system.

Although such control of information lies with all violators, it is especially critical in the matter of white-collar violations of law (and for that matter for organized

crime also) since an essential element in these violations is the use of a position of power to violate the law. Frequently that position of power gives the individual great leverage to control not only knowledge about the violation but access to information that would facilitate its detection. As Katz emphasizes in discussing what he calls "white-collar social class position": "[It] is used (1) to diffuse criminal intent in ordinary occupational routines so that it escapes unambiguous expression in any specific situated behavior; (2) to accomplish the crime without incidents or effects that can be taken officially as presumptive evidence that a crime has occurred before the criminal has been identified; and (3) to cover up the culpable knowledge of participation through concerted action which creates for each a position of strategic ignorance" (1979:9-10). We would note additionally that even where there is suspicion that position has been used to commit a violation of law, that position of the "suspect" provides considerable leverage to distort or conceal information essential to factual determination of violation under the law.

When statistical information on white-collar violations developed by enforcement or regulatory agencies is used as indicators or proof, it is well to remember that that information is compromised not only by agency interests and objectives but that the accuracy and validity of agency information is to a substantial degree determined by the socially organized behavior of the producers of information who are suspected of violating the law. What we can produce then as statistical indicators from current information systems developed by federal enforcement and regulatory agencies is a set of statistical indicators largely devoid of information on how the original producers affect that information. We are dependent primarily upon information as it is defined and processed by agencies of social control (though there is considerable variation in the extent to which positions of power can thwart agency means of detection, as we have noted previously).

Production of Information by Agencies of Social Control. There is enormous diversity in the kind of information that is relevant to the control of white-collar violations of law. The only constraint upon each enforcement agency has been that the final adjudication of matters as criminal violations of law lies with the system of prosecution and adjudication in the federal courts. Until quite recently, no attempt had been made to develop even the semblance of a uniform reporting system on white-collar law violations comparable to that developed for uniform reporting of ordinary crimes.

This lack of uniformity and the range of discretion is reflected in the annual reports of federal regulatory and enforcement agencies that deal with matters of relevance to white-collar violations of law. Until quite recently, few, if any, agencies explicitly recognized the problematic nature of counting violations. Agencies generally provide information only on raw counts without any reference to a statistical base for their reporting. The simple production of raw counts in statistical reporting on white-collar violations of law reflects an inattention to the use of statistical information for other than particular and immediate objectives of the agency. As we have noted before, the statistical information systems of federal agencies often reflect an older concern with justifying the agencies' mission or mandate and a newer concern for systems management. A first concern is ordinarily reflected in statistics about caseloads and manpower relative to the raw magnitude of the problem; a newer concern is with information that facilitates case management.

There is yet another reason why statistical indicators and their reporting have been less consequential for social control in federal regulation and enforcement of white-collar law-breaking. Regulatory agencies are largely dominated by lawyers and by legal interests. Statistical matters are considered to be largely items of information for administering the agency rather than for informing the application of law. Lawyers tend to be interested primarily in cases and case law rather than in statistical aggregates of cases. They seek to report change as accomplishment or progress with particulars rather than in terms of cases more generally considered. They choose to report the unique or precedent setting case. We have been struck with how frequently agencies report synopses or digests of cases to "illustrate" their "accomplishment" or account for their activity.

Shapiro (1980:109-111) makes note of this basic conflict between what she calls scientific and legal reporting interests in summarizing her approach to studying SEC investigations:

"... it would be rather strange indeed if a casebook in securities law was based on a random sample of all securities litigation or even if SEC annual reports commented on a random sample of the year's cases rather than its most significant ground-breaking cases. . . . One gets an extremely different sense of reality from sampling the typical rather than the unusual, the frequent than the infrequent. If I had listed the names of the 581 cases in the sample (which I don't because of assurances of confidentiality) even the finest scholar of securities law would recognize very few of the cases. And that is because they are not

distinctive. These data, therefore, will look very unfamiliar to the lawyer. But they will probably look unfamiliar to most SEC staff as well, especially those higher in the hierarchy, whose vision is directed to the new, challenging, interesting ground-breaking cases that are carefully built and often vigorously litigated and appealed. Their blinders will exclude from their vision the typical violation quickly consented to by offenders because years of precedent and experience indicate that litigation will be pointless. It will exclude as well minor violations that never are formally prosecuted and, therefore, have little chance of inclusion in a casebook. To these observers, the work of the agency as reflected in these data will seem unfamiliar and probably trivial. Indeed, one response to a preliminary report of research findings was that they were "wrong." They are not "wrong"; they are different and the difference derives from definitions of population and strategies of sampling."

Our task of developing an information system for defining, counting, and reporting information on white-collar delicts is indeed a difficult one, given these reasons for the historical development of statistical information on white-collar violations of law. At the very least, we can lay out the major problems presented by the current state of statistical reporting and recommend directions for their resolution. In a more positive vein, we can point to the ways in which current information can serve as a basis for classification, counting, and reporting in the future.

Perhaps the most serious difficulty we confront in attempting to use current information systems for classifying and counting white-collar violations of law is that they do not provide information in a way that conforms to our definition of them. Taking the criminal justice and regulatory systems of information as they exist, the definition of white-collar law-breaking we propose cannot be applied to the data of most agencies. As such, the concept does not lend itself to easy operationalization for some particular research on which someone may currently wish to embark or for the development of statistical indicators on white-collar law-breaking.

The original agency records of some agencies, to be sure, may provide sufficient detail so that information could be classified under our definition of white-collar law breaking. But the fact that most agencies classify information either in terms of legal statutory categories of law-breaking or in terms of their administrative criteria for defining and processing cases means that the information in their statistical data processing systems will not lend itself to our classification.

Our definition can prove to be operational in a comprehensive way only if it can gain broad acceptance with the government and if it comes to influence the manner in which record systems are constructed and managed. But these record systems, as we have continually stressed, cannot be independent of the manner in which the agencies whose transactions they reflect conduct their business. And that business, in turn, must be conducted in accordance with the law. Our definition, or any other, therefore, will prove useful only to the degree that its conceptual structure is found usefully coherent and lends orientation both to law and to its administration. (One of the intended consequences of our definition is to propose changes in the definition of "white-collar crime" recently incorporated in one law--The Justice System Improvements Act of 1979).

We have attempted to have our definition reflect what we think are both express and latent ideas that are already important to law and to action. Regardless of any intrinsic appeal it may have as a tool for lending greater coherence to law and action, as well as to statistics, we recognize that it will gain the degree of adoption consistent with its broad operational applicability only if it is marketed in a more attractive package than the lengthy preceding arguments.

THE SOCIAL ORGANIZATION OF SYSTEMS OF DEFINING AND PROCESSING LAW VIOLATIONS

Theoretically we may distinguish two types of law enforcement systems for defining and processing law violations: compliance and penalty law enforcement systems. Within a particular agency of social control, these two types of systems often are merged or fused in the same or different operating units. Current practice affords examples of more or less pure compliance and of pure penalty law enforcement or regulatory agencies. Of the two, the one dedicated to penalizing behavior if it is law-breaking is perhaps the more common historically, though with the growth of government regulation and the spread of administrative law, compliance is more commonly an objective of governmental social control.

Compliance Law Enforcement Systems

The main objective of compliance law enforcement systems is to secure conformity with the law without the necessity of defining, processing, and penalizing persons or organizations as violators. Compliance systems seek to protect persons and organizations from being victimized by law violations through preventing their occurrence or, after their occurrence, to return the behavior to one of compliance. In the ideal-typical compliance system, penalties are allotted only as a last resort, if at all, for

non-compliance. Penalties ordinarily are not meted out because alternative ways are used to secure compliance and penalties are seen only as a means to be used when there is a failure to secure compliance after reasonable opportunity is given to conform. The pure compliance agency has no direct powers to penalize for noncompliance, although ordinarily it has powers to refer failures to comply to some sanctioning agents. Although it is an oversimplification, compliance systems are concerned with preventing victimizations while penalty systems are concerned with punishing offenders.

Compliance law enforcement systems arise in response to conditions that are ordinarily not dealt with effectively by conventional negative sanctioning or penalty systems or when matters are deemed too important to be left to lengthy processes of sanctioning persons or organizations as violators.

There also are a number of more specific conditions that lead to the development of compliance law enforcement systems. Firstly, one expects compliance systems to emerge where collective rather than individual harms are a likely consequence of violation. They are particularly likely to be mandated when the risk of that collective harm is very consequential, even though it may be a relatively rare event. For example, given the harmful effects of radiation and the potentially destructive effects on large populations who are exposed to it, attempts are made to secure compliance through regulation rather than by punishing violators.

Secondly, compliance systems usually are associated with the intent to protect victims from harms that are considered preventable if particular actions are taken. Quite commonly, compliance systems are associated with licensing systems which require some demonstration that conformity exists before a license is issued authorizing the regular practice of the activity that is licensed. Licensing, as we have noted, also is associated with inspection systems designed to monitor continuing compliance.

There is a wide range of agencies in the federal government that license activities on the presumption that the public is best protected when compliance is demonstrated in advance of any opportunity to offend. Increasingly one must show that food, drug, and other products meet safety requirements before they may be marketed. Moreover, once marketed, if there is risk of harm, the emphasis is upon the withdrawal of the product from the market until it is demonstrated to be safe.

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Thirdly, the modes of detecting and defining behavior that violates the law must be somewhat different in compliance as compared with penalty systems. In a compliance system the emphasis falls upon meeting a given standard or set of conditions of behavior and on how compliance may be brought about before further harm is done. In a penalty system, the emphasis falls upon proving that the violation was committed and determining what punishment is appropriate either as a deterrent or in the interest of justice.

Fourthly, it is not uncommon for an agency to be given a mission of securing compliance when unregulated behavior may lead to conditions or consequences for the collectivity in the short and long-run that can be prevented only in the short-run. The Federal Election Commission (FEC), for example, states: "The Commission administers, seeks to obtain compliance with, and formulates policy with respect to the Federal Election Campaign Act Amendments, including the Federal campaign disclosure requirements, contribution and expenditure limitations, and public financing of Presidential conventions and elections" (GSA, 1978/79:528-29). Unless campaign contributions are regulated so that there is relatively immediate compliance, their effect on elections cannot be reversed. Where the object is to control irreversible effects on collective interests, compliance often is the objective.

Fifthly, compliance systems are more likely to emerge where regulators or controllers are able to keep track of potential or current violators and exert some measure of direct control over their behavior. Where members of a population, whether persons or organizations, are difficult to locate or track compliance rests more on voluntary means and often is less effective as a technique of social control. Consequently, compliance systems usually are directed toward populations of organizations that are established and known since they can be monitored directly for compliance on a continuing basis. Where persons are a part of organizations that can be similarly tracked and monitored, they likewise are more likely to be emeshed in compliance systems. Indeed, the more closely one can track for compliance, the more likely one is to develop such a system of law enforcement.

Even where compliance seems to fail more often than it succeeds, such as in housing code enforcement or in the release of offenders for probation or parole, compliance continues to be the operating assumption because of a belief that behavior or conditions can be changed by "acts of compliance". Failure, in these cases, more often than not, rests in the fact that these operating assumptions of tracking and direct monitoring either cannot be fulfilled, that they are in some sense not enforced, or that they are

otherwise enforceable. Failure may also be due to a fault in the presumption that the behavior or conditions of violation can be changed by acts of compliance.

Sixthly, compliance systems are more likely to be directed toward behavior that is repetitive activity or a related series of actions. There perhaps are a number of reasons why this is so. For one, the problem of causal intervention is simplified in such cases. It is reasonably sure that if one gets a plant to stop a given discharge, pollution from that source will cease. For another reason, it is simpler to detect and monitor repetitive behavior, since it is more predictable and less subject to cloaking and deception. Undoubtedly, the more predictable any activity the more reasonable it is to control it by some form of compliance measures. It is not surprising, therefore, that where the consequences of harm can be predicted and controlled, as in the production of products, regulation is by compliance.

Finally, we are more likely to seek compliance when either the same victim is repeatedly victimized by the same offender in a related series of events or when there are a very large as contrasted with a very small number of victims for any given offender. The main reason for seeking compliance in these situations is a belief that future harm can be avoided only by some changes in behavior and because few penalties, short of incapacitation of either persons or organizations, are applicable and considered effective in such situations.

Compliance Information Systems. It is no simple matter to determine whether the population to which the law applies--a person, a corporation or partnership, a facility such as a mine, or a product--is in compliance. For compliance involves not only standards, their definition, and tests of how standards are met, but also ways to determine who must comply and how those persons and organizations are to be located.

What is to comprise some measure of noncompliances is perhaps equally problematic. A simple way to look at noncompliance is to assume that it is the obverse of compliance. There are then two forms of noncompliance. One results from the fact that among those eligible to conform under the law, some do not make their eligibility known--either by intent or from ignorance. A second stems from the fact that among those whose eligibility is known, some do not meet the test of compliance.

To determine either of these forms of compliance is no simple matter. Most compliance systems fail to develop a measure of who is eligible for inclusion in the population that is expected to comply, along with a corresponding test

of that noncompliance that resides in the failure to declare eligibility. Indeed, it is a rare exception for an agency to attempt to determine the extent of noncompliance by failing to declare eligibility. The TCMP program of IRS which seeks to measure the level of compliance with requirements for tax filing by individual wage earners is a rare exception. But IRS has no comparable measure for partnership or corporate tax returns. EPA possesses no way of determining how many sources of pollution there are in the United States; OSHA and FDA lack a frame of eligible sites; and SEC must be content with sampling frames such as stock registrations and corporate filings. The Mine Health and Safety Administration has an historical register of subsurface mines but no efficient means for determining the eligibility status of surface mines or for additions to the register. Just which organizations should be eligible for monitoring is a seemingly insoluble problem for the Federal Elections Commission, given the ephemeral nature of campaign financing organizations. Indeed what is paradoxical about the FEC legislation is that it perennially mandates the creation of a large number of short-lived organizations whose existence is not readily determined nor their behavior easily monitored.

This absence of reasonably precise estimates of the eligible population for compliance measures creates problems for the development of statistical indicators. For the most part one lacks information on the appropriate base population for whom compliance is to be measured. Therefore, the record-keeper must be content with a measure of the population that is considered amenable to social control by the agency supplying the statistical information. Yet in many cases, even that information is not easily acquired. One cannot obtain a measure of eligibles from the SEC and must rely upon a register of Form 10K filings as one measure of eligibles for security violations. Yet a substantial number of securities violations occur for organizations or by individuals who are not included in any register. Indeed, the SEC has no stringent test for eligibles.

General Measures of Compliance. Compliance-oriented agencies normally assume that standards of compliance can be met within reasonable periods of time. They provide for a period during which those "not-in-compliance" may conform. During that period, one may be restored to a state of compliance at any time that conformity can be demonstrated by some test of compliance. It is the failure to meet that test or to fail intentionally to do so that then may be treated as an ordinary violation of law subject to penalty as defined by administrative, civil, or criminal law. Intentional behavior usually is a requirement for it to be dealt with as a criminal matter.

There are enormous difficulties in considering general measures of compliance that encompass one or more agencies, given the vast differences in standards among agencies and tests of compliance. It would be no simple matter, for instance, to compare compliance with a standard for water or air pollution with compliance for a standard for occupational safety or product pricing, given the lack of comparability in setting standards and in tests of compliance.

Even within an agency, it is no simple matter to develop uniform measures of compliance since not all compliance measures lend themselves to the same statistical formulations. A good example of the difficulties in merging an agency's information on compliance is provided in the rule-making and voluntary compliance programs of the FTC. To avoid enforcing compliance with antitrust law on a case-by-case basis, the FTC, particularly since 1962 and Magnuson-Moss, has promulgated trade regulation rules. Factors which the Commission takes into account in determining whether or not an industrywide rule would be appropriate include the prevalence of the acts or practices under investigation (widespread prevalence usually renders rulemaking the preferred enforcement mechanism), costs of industrywide investigation and rulemaking proceedings, and the feasibility of FTC enforcement of the proposed trade regulation rule (FTC, 1979:Ch. 7). The Commission sees four advantages to rulemaking. Firstly, it saves the agency the cost of case-by-case adjudication. Secondly, businesses have greater certainty in determining which practices are not permissible. Thirdly, it avoids singling out any particular cases for the imposition of civil penalties. And, finally, it enables the agency to take into account a diversity of information which otherwise might not be considered in formulating the rule.

Although one can "count" the number of trade-regulation rules issued for any given period of time (as in Table 5.4), the count of rules issued is at best only a very crude measure of organizational compliance. Indeed, the resort to rule-making virtually precludes any precise counting of compliance actions by organizations since the procedure of promulgating rules rests on a presumption there will be a substantial but unknown amount of violation that the rules are designed to remedy. Rule-making, moreover, almost by definition has a "one-time" effect in securing compliance, since subsequently one would have to develop a test of compliance with the rules which could then be counted on a case-by-case basis. A measure of compliance is more difficult to develop than one of noncompliance since compliance measures require a count of the population that is eligible to conform.

TABLE 5.4

FTC TRADE REGULATION RULES¹ ISSUED

Year	Number
1963	0
1964	5
1965	7
1966	7
1967	7
1968	7
1969	7
1970	7
1971	3
1972	NA
1973	2
1974	0
1975	0
1976	2

¹ Includes only rules interpreting Section 5 of the FTC Act. Does not include binding rules issued under the authorization of the Textile, Wool, Fur or Flammable Fabrics acts, or the Fair Packaging and Labeling Act, or the consumer warranties section of the Magnuson-Moss Act.

Source: Stephen Bruce, "Report on Enforcement Activities of the Federal Trade Commission," (unpublished paper, Committee on Legal Indicators of the Center for Coordination of Research on Social Indicators, Social Science Research Council, 1978), Table 15.

Janet Berney, "Legislative and Administrative contexts of Federal Trade Commission Data," BSSR, August, 1979, Table 28.

Voluntary compliance mechanisms are commonly used by FTC but an aggregate count of compliance behavior is difficult to obtain from FTC actions. Some voluntary enforcement mechanisms, such as advisory opinions (Table 5.5) and the now discontinued trade practice rules (Table 5.6), stipulations (Table 5.7), assurances of discontinuances, and assurances of voluntary compliance (Table 5.8), can be counted. Others, such as industry guides, are quite infrequent (Table 5.9). No information is provided on FTC staff opinions, though they should be as amenable to count as advisory opinions.

The Commission's advisory opinion is a written response to a specific request. It discusses the application of one or more provisions of law to a detailed factual situation of a proposed or actual course of conduct. If the Commission approves a proposed business practice through an advisory opinion, it cannot take an enforcement action against the requesting party for engaging in that practice, since it is engaged in an action in good faith, relying upon Commission advice. The FTC considers an advisory opinion appropriate when (a) there is a novel question of fact or law without a Commission or Court precedent, (b) the subject matter is of general interest, (c) a proposed merger or acquisition is involved, or (d) when the General Counsel and either the Bureau of Competition or the Bureau of Consumer Protection are in conflict as to the nature of the advice to be given. A FTC staff opinion letter is formulated in a manner similar to an advisory opinion. It may be sent in response to a request for an advisory opinion when an advisory opinion is not considered appropriate or necessary to protect the legal interest of the requesting party. Unlike the advisory opinion, a staff opinion from the General Counsel's office is not binding upon the FTC.

The FTC issues an industry guide when a large number of parties appear to be engaging in a similar type of noncompliance with the antitrust law, and where there is reasonable expectation there would be high compliance if there were guidance from the FTC. The guide rather than a trade regulation rule is chosen when it is difficult to promulgate a standard that has the specificity necessary to a legal rule or the Commission lacks sufficient information about a practice to promulgate a rule and where the expense of investigation seems prohibitive or unwarranted. The industry guide is simply an administrative interpretation of the law for which the Commission has an enforcement responsibility, but it is not binding either upon the Commission or the parties to an enforcement action (though it can be used as evidence in an adjudicative proceeding).

Apart from its voluntary compliance program, the FTC also seeks compliance through the initiation of a formal complaint procedure. When a formal complaint is issued, the

TABLE 5.5

NUMBER OF ADVISORY OPINIONS ISSUED BY THE
FEDERAL TRADE COMMISSION, 1969-1975.

Year	Number
1969	128
1970	121
1971	163
1972	159
1973	103
1974	104
1975	96

Source: 1969 - Budget Appendix (1971, 1970-75 - Hearings for 1977. Stephen Bruce, "Report on the Enforcement Activities of the FTC" Table 16; Janet Berney, "Legislative and Administrative Contexts of Federal Trade Commission Data," BSSR, August, 1979, Table 33.

TABLE 5.6

NUMBER OF TRADE PRACTICE RULES PROMULGATED
BY THE FEDERAL TRADE COMMISSION, 1956-1964.

Year	Number
1956	14
1957	10
1958	5
1959	14
1960	3
1961	3
1962	10
1963	2
1964	8

¹Includes revisions.

Notes: 1. The FTC stopped using the Trade Practice procedure in 1963 or 1964. It was first used in 1919. Unlike Trade Regulation Rules, Trade Practice Rules do not have, and never had, the force and effect of law.

Source: Stephen Bruce, "Report on the Enforcement Activities of the Federal Trade Commission," (unpublished paper, Committee on Legal Indicators of the Center for Coordination of Research on Social Indicators, Social Science Research Council 1978), Table 16; Janet Berney, "Legislative and Administrative Contexts of Federal Trade Commission Data," BSSR, August, 1979, Table 37.

TABLE 5.7
NUMBER OF STIPULATIONS OBTAINED BY THE FEDERAL TRADE COMMISSION, 1924-1960.
(Stipulations Discontinued 1961)

Year	Stipulations		Total
	Before Complaint	After Complaint	
1924	3	NA	3
1925	5	6	11
1926	102	3	105
1927	80	1	81
1928	68	3	71
1929	118	3	121
1930	275	3	278
1931	203	0	203
1932	332	1	333
1933	181	1	182
1934	201	2	203
1935	357	1	358
1936	544	1	545
1937	614	17	631
1938	564	5	569
1939	466	4	470
1940	563	1	564
1941	NA	NA	NA
1942	NA	NA	NA
1943	NA	NA	NA
1944	NA	NA	NA
1945	248	4	252
1946	NA	NA	NA
1947	NA	NA	NA
1948	NA	NA	NA
1949	126	5	131
1950	147	2	149
1951	NA	NA	NA
1952	NA	NA	NA
1953	NA	NA	NA
1954	NA	NA	NA
1955	NA	NA	NA
1956	NA	NA	166
1957	NA	NA	105
1958	NA	NA	146
1959	NA	NA	147
1960	NA	NA	104

Source: Stephen Bruce, "Report on the Enforcement Activities of the Federal Trade Commission," (unpublished paper, Committee on Legal Indicators of the Center for Coordination of Research on Social Indicators, Social Science Research Council, 1978), Table 8; Janet Berney, "Legislative and Administrative Contexts of Federal Trade Commission Data," BSSR, August, 1979, Table 36.

TABLE 5.8

NUMBER OF ASSURANCES OF DISCONTINUANCE AND COMPLIANCE OBTAINED
BY THE FEDERAL TRADE COMMISSION, 1962-1977.

Year	Assurances of Discontinuance			Assurance of Voluntary Compliance		
	Total	Antimonopoly	Deceptive Practices, Excluding Textile, Wool, Fur, Flammable Fabrics	Total	Antimonopoly	Deceptive Practices, Excluding Textile, Wool, Fur, Flammable Fabrics
1962	271	7	255			
1963	239	3	224			
1964	298	0	298			
1965	776	36	596			
1966	284	0	284	422	43	273
1967	65	33	31	519	29	390
1968	6	0	6	506	33	433
1969	1	0	1	511	45	417
1970	(D)	(D)	(D)	346	37	286
1971				135	12	111
1972				49		
1973				16		
1974				1		
1975				0		
1976				0		
1977				(D)		

Source: U.S. Congress House of Representatives Committee on Appropriations, Hearings for 1962-1977. Stephen Bruce, "Report on Enforcement Activities of the Federal Trade Commission, 1978, Tables 7 and 7a; Janet Berney, "Legislative and Administrative Contexts of Federal Trade Commission Data, 1979, Tables 35 and 35a.

TABLE 5.9

NUMBER OF INDUSTRY GUIDES¹ ISSUED BY
THE FEDERAL TRADE COMMISSION, 1960-1964.

Year	
1960	3
1961	0
1962	2
1963	1
1964	0

¹ The Commission still uses Industry Guides but data for more recent years were not located in published reports.

Source: Budget Appendix, annual. Reprinted in Stephen Bruce, "Report on Enforcement Activities of the Federal Trade Commission," 1978, Table 16; Janet Berney, "Legislative and Administrative Contexts of Federal Trade Commission Data, 1979, Table 34.

party is served with a copy of a complaint along with a proposed cease and desist order. The complaint may be settled at this point through a compliance procedure that involves a consent order negotiated between the General Counsel of the FTC and counsel for the party named in the complaint. A consent order is a formal agreement signed by the FTC and the respondent certifying that although the respondent acknowledges no violation of FTC laws or regulations, none of the practices stipulated in the agreement will be undertaken in the future. These consent orders are binding and have the same legal force as cease and desist orders. Violation of a consent order can be sanctioned by legal penalties (GSA, 1978/79:549). The respondent party is expected to furnish information and a statement of compliance subsequent to the orders, though no independent test or audit is made to determine a state of actual compliance. Information on these orders is presented in Tables 5.10 and 5.11. A partial measure of the extent to which cease and desist orders meet the compliance "test" of a consent order is presented in Table 5.12, where it is apparent that a substantial majority of cease and desist orders are generally handled by consent orders, though the number of orders is higher for all deceptive practice than antimonopoly cases. Among deceptive practice cases, consent orders are less commonly used in textile, fur, wool, and flammable fabrics industries (a matter of separate statutory treatment) than in other industries subject to FTC regulation. The heavy reliance of the Commission upon consent orders rather than litigation in disposing of matters under cease and desist orders issued under the Robinson-Patman statutory authority is evident in Table 5.13.

What is characteristic of above FTC compliance statistics reported is more generally characteristic of compliance reporting by most regulatory agencies. Each of the FTC measures above is a measure of Commission actions to insure compliance rather than a measure of actual compliance by the allegedly offending party. There is no independent test of compliance applied by the Commission (other than a voluntary statement and filing of compliance by the alleged offending party at some point following the allegation). What we have most commonly then as measures of compliance are statistics of actions taken by social control agencies that are designed to secure compliance or that have face validity as compliance measures.

Independent tests of compliance are made by agencies that have a proactive system of assessing compliance (as well as to determine violations per se). An example is provided in the reporting of compliance in FDA inspections (Tables 5.14 and 5.15). It should be apparent, however, that it would be quite difficult to develop cross-agency measures of compliance, given the diversity in compliance

TABLE 5.10
NUMBER OF CEASE AND DESIST ORDERS ISSUED
BY THE FEDERAL TRADE COMMISSION, 1957-1976.

Year	Total Cease and Desist Orders	Antimonopoly Cease and Desist Orders	Deceptive Practices Cease and Desist Orders	Deceptive Practices Cease and Desist Orders, Excluding Textile, Wool, Fur, and Flammable Fabrics
	1944-53 average= 96.6	1944-53 average= 21.4	1944-53 average= 75.2	
1954	104	24	80	
1955	112	30	82	
1956				
1957	179			
1958	273			
1959	331			
1960	346			
1961	374	103	272	180
1962	407	92	319	176
1963	454	261	193	118
1964	385	39	249	161
1965	175	39	136	67
1966	196	94	102	51
1967	215	30	185	96
1968	138	23	115	53
1969	221	27	194	68
1970	230	18	210	71
1971	229	30	199	104
1972	290	17	273	191
1973	212	28	184	97
1974	117	22	95	
1975	199	17	182	175
1976	192	38	154	137

Source: Stephen Bruce, "Report on Enforcement Activities of the Federal Trade Commission," (unpublished paper, Committee on Legal Indicators of the Center for Coordination of Research on Social Indicators, Social Science Research Council, 1978), Table 11. Janet Herney, "Legislative and Administrative Contexts of Federal Trade Commission Data," 1979, Table 21.

TABLE 5.11

NUMBER OF CONSENT ORDERS TO CEASE AND DESIST,
FEDERAL TRADE COMMISSION, 1954-1976.

Year	Total Cease and Desist Orders	Total Consent Orders Issued	Antimonopoly Consent Orders	Deceptive Practices Consent Orders, Excluding Textile, Fur, Wool and Flammable Fabrics	Textile, Fur, Wool, and Flammable Fabrics
1954	104	36			
1955	112	76			
1956					
1957					
1958					
1959					
1960					
1961					
1962					
1963	454	365	213	86	66
1964	385	260	80	97	83
1965	175	132	18	47	67
1966	196	166	80	37	49
1967	215	172	17	68	87
1968	138	100	10	29	61
1969	221	198	19	54	125
1970	230	207	12	57	136
1971	229	214			
1972	290	293			
1973	212	198			
1974	117	106			
1975	199	180	14	161	5
1976	192	180	33	130	17

Source: Stephen Bruce, "Report on Enforcement Activities of the Federal Trade Commission," (unpublished paper, Committee on Legal Indicators of the Center for Coordination of Research on Social Indicators, Social Science Research Council, 1978), Table 12; Janet Berney, "Legislative and Administrative Contexts of Federal Trade Commission Data," 1979, Table 22.

TABLE 5.12
PERCENT OF FEDERAL TRADE COMMISSION CEASE AND DESIST
ORDERS SETTLED BY CONSENT ORDERS, 1954-1976.

Year	Total Consent Orders of Cease and Desist Orders	Antimonopoly	Deceptive Practices	Deceptive Practices, Textile, Excluding Wool, Fur, and Flammable Fabric	Textile, Wool, Fur, and Flammable Fabrics
1954	35				
1955	68				
1956					
1957					
1958					
1959					
1960					
1961					
1963	80	82	79	74	88
1964	68	59	72	60	94
1965	76	46	84	70	102
1966	85	46	84	72	96
1967	80	57	84	71	98
1968	72	43	78	55	98
1969	90	70	92	79	99
1970	90	67	92	80	98
1971	93				
1972	98				
1973	93				
1974	91	82	91	92	71
1975	90	87	95	95	100
1976	94				

Source: Stephen Bruce, "Report on Enforcement Activities of the Federal Trade Commission," (unpublished paper, Committee on Legal Indicators of the Center for Coordination of Research on Social Indicators, Social Science Research Council, 1978), Table 13; Janet Berney, "Legislative and Administrative Contexts of Federal Trade Commission Data," 1979, Table 23.

TABLE 5.13
DISPOSITION OF FEDERAL TRADE COMMISSION ROBINSON-
PATMAN CEASE AND DESIST ORDERS, 1953-1968

Year	Total	Litigated	Consent
1953	14	8	6
1954	4	2	2
1955	11	7	4
1956	22	8	14
1957	19	7	12
1958	51	9	42
1959	46	9	37
1960	51	9	42
1961	107	8	99
1962	108	31	77
1963	242	8	234
1964	55	16	39
1965	75	6	69
1966	14	8	6
1967	13	2	11
1968	9	1	8
1969	6	1	5

Source: Hearings for 1971. Reprinted in Bruce, Stephen, "Report on the Law Enforcement Activities of the FTC."

TABLE 5.14

PERCENT OF FDA INSPECTIONS IN COMPLIANCE, 1972-1978

	1972	1973	1974	1975	1976	1977	1978
Food Safety	61	76	82	80	87	92	92
Food Economics	60	67	69	75	77	79	87
Human Drugs	62	66	58	76	78	85	84
Animal Drugs and Feeds	44	57	60	66	72	78	77
Medical Devices and Diagnostic Products	61	71	70	77	75	87	85
Cosmetics	N/A	N/A	77	82	83	89	90
Biologics	N/A	N/A	86	72	83	90	94
Radiological Health	N/A	77	83	87	74	68	85
Total	60	72	77	78	83	89	90

Source: FDA Quarterly Activities Report - Fourth Quarter 1973-1978.

Note: These are classified inspections, i.e., those that have been determined to be in or out of compliance at the end of the reporting period. This number may be equal to or less than the actual number of activities accomplished during the reporting period.

TABLE 5.15

FDA DOMESTIC SAMPLE EXAMINATIONS:
PERCENT IN COMPLIANCE, 1972-1978

	1972	1973	1974	1975	1976	1977	1978
Food Safety	70	64	64	65	64	65	62
Food Economics	52	49	63	44	35	38	52
Human Drugs	84	80	80	81	73	70	67
Animal Drugs and Feeds	73	52	64	70	54	56	47
Medical Devices and Diagnostic Products	72	63	50	66	39	45	39
Cosmetics	N/A	N/A	60	72	56	57	32
Biologics	N/A	N/A	25	67	9	19	29
Radiological Health	N/A	N/A	88	72	76	79	78
Total	72	65	66	69	64	63	60

Source: FDA Quarterly Activities Report - Fourth Quarter 1973-1978.

Note: Classified samples are those that have been determined to be in or out of compliance at the end of the reporting period. The figures above refer to classified samples. The number may be equal to or less than the actual number of activities accomplished during the reporting period. In the actual classification process there are intermediate ranges of compliance and multiple causes for noncompliance which may range from improper labeling to health hazards. The majority of the lower compliance percentiles in the domestic sample columns result from improper labeling.

N/A - not Applicable or Available.

tests and the activities to which they apply. Thus, FTC and FDA procedures and processes are sufficiently disparate so as to preclude merging their compliance measures without substantial change in definitions and procedures of counting. General measures of compliance can be developed for organizations or individual parties although to our knowledge no such measures are employed by any current agency. Clinard and Yeager's (1979:82) finding that 40 percent of their corporations were not charged with any violations by the 24 federal agencies whose enforcement actions were considered in their study is a crude measure of general compliance, assuming that the absence of violation is a measure of compliance.

Examination of the disposition of FTC cases makes clear some of the difficulties that inhere in developing a summary measure, or measures, of compliance actions by an agency such as the FTC. Given the diversity of such actions--orders, industry guides, and stipulations, for example--it is difficult to see how a good single summary measure could be devised for agency actions to achieve conformity. There is no common measure implied in these particular actions.

Development of a measure of the extent to which parties subject to FTC regulation comply with FTC regulations is even more problematic. At the very most, we could develop measures of compliance on the part of organizations or parties that were under FTC investigation or the subject of a complaint procedure. Summary statistics then will largely reflect agency behavior, as both an appropriate base to which FTC legislation applies and independent tests of compliance are lacking. Such measures ordinarily reflect only the actions a party must take to satisfy a state of compliance.

This is not to say that some measure summarizing compliance with different agency regulations is not both conceptually and empirically possible. One useful concept that is employed by a number of agencies is the concept of abatement of a condition of noncompliance or violation. Abatement signifies that an action has been taken by an offending party to bring conditions to a state of compliance. Among the agencies that we investigated that could in one way or another provide some information on abatement are OSHA, EPA, MSHA, CPSC, FDA, and to some extent NRC and FTC. The procedures of OSHA and MSHA may serve to illustrate the possibilities for such summary statistics.

If an OSHA inspection discloses a violation of Section 5 of the OSHA Act or any relevant rule, order, or regulation pertaining thereto, a citation is issued that describes the nature of the violation, the authority to treat it as such, and "a rational time" is fixed for the abatement of the violation. Only if the employer fails to correct the

violation during the abatement period will a penalty be assessed. Rather similarly, when an MSHA inspection discloses a violation of a mandatory health or safety standard, a citation is issued to the operator of the mine and "a reasonable time is fixed for the abatement of the violation." If the violation has not been corrected in this period of time, an order may be issued withdrawing all employees from the mine area, save those essential to correct or consult on the violation or to undertake inspections. Some general measures of compliance by abatement then seem possible.

Parenthetically, we would note that even such conditions as product recall might be treated as an "abatement" procedure and hence dealt with within this framework. One of the difficulties with "recall" statistics is that there rarely are reliable statistics on compliance with all but the formal requirements of recall, e.g., compliance in transmitting of formal notice to abate conditions stipulated in the recall. The extent to which there is actual compliance correcting those conditions is problematic, given the absence of independent tests. Some information is available for some kinds of product recalls, particularly in the form of costs to manufacturers, but there generally is no way of systematically using such information.

Statistics on abatement, unfortunately, are based upon a highly variable unit of activity to discover a violation such as an inspection, investigation of complaints or of a condition, or audits. Since agencies can vary considerably in the means taken to discover violations and also in their ability to take actions toward abatement, such summary measures across agencies may conceal more than they disclose. Some indication of how variable such regulatory activities can be is provided in Table 5.16, which indicates ratios of agency activity to their population under regulation. Given the legal mandates for mine inspections, ratios for the Bureau of Mines are highest among the four regulatory agencies considered in Table 5.16. Clearly, however, any measures of abatement will depend at least upon differences in opportunities to discover conditions of violation.

Penalty Law Enforcement Systems

The main manifest objective of a penalty law enforcement system is to determine whether the law has been violated and, if so, to assess penalties to deter violations of law or to punish for past violation in some interest in justice. Penalties may be meted out both to deter the violator in the future or to deter others from violating. Where deterrence is not an issue, penalties may have other objectives, such as to redress injury to victims or to

TABLE 5.16

PROPORTIONATE INDICATORS OF THE FREQUENCY OF FEDERAL REGULATORY ACTIVITY

Fiscal Year ¹	No. SEC Surprise Broker-Dealer Inspections per 10 Broker-Dealer Firms	No. Bureau of Mines Inspections per 10 Active Coal Mines	No. Informal Complaints by CAB per Passenger and Shipper Complaint Received	No. FTC Merger Investigations Instituted per Business Merger in Previous Calendar Year
1956	2.12	11.4		.092
1957	2.56	10.1		.067
1958	3.11	10.4		.086
1959	3.03	10.4		.187
1960	2.86	11.5		.175
1961	2.99	13.0	1.39	.214
1962	2.63	13.7	1.33	.199
1963	2.83	13.2	1.25	.185
1964	2.95	12.2	1.30	.268
1965	3.10	13.3	1.17	.359
1966	2.95	12.0	1.28	.236
1967	2.47	13.0		.177
1968	1.18	16.4	1.13	.156
1969	1.54	14.3 ²		
1970	1.36		1.18	
1971	1.58			

¹ Calendar Year for Bureau of Mines Data² EstimateSources: Annual reports of agencies mentioned, Budgets of the United States Government (Appendix), Statistical Abstract of the United States, and U.S. Department of Justice.

punish the violator for the harm caused on some principle of apportionment. There also may be latent objectives (or functions) such as the role of punishment in increasing or maintaining social solidarity or to develop or modify some political interests, as in genocidal policies or the maintenance of political or other elites.

The core of a penalty system are the subsystems devoted to the detection and proof of violations. Ideally, a compliance system seeks to prevent violations and uses detection systems only as a means of monitoring compliance, whereas ideally a penalty system seeks to detect violations since only then can penalties be brought to bear in the interest of some other collective sentiment such as justice.

Where the major objective of a penalty system is deterrence, particularly deterrence of others, the system may be said to have a proximate goal of punishment whose consequences are compliance; in that sense punishment is a means to an end of compliance. The main way that such a "penalty compliance" system differs from a "compliance" system lies in the role of enforcement agents and the means deployed to secure compliance. Compliance systems do not regard penalties as a means to secure compliance but as a sanction when there has been a failure to comply after having been given an opportunity to do so. Compliance models deemphasize the importance of costs for failure to comply and emphasize that costs should be allocated towards compliance.

Since the core of a penalty system is the detection and proof of violations so that penalties may be administered, the main activity is devoted to detection and proof of violation, and deciding upon penalties rather than upon the actual administration of penalties and a determination of their effectiveness. Indeed, few law enforcement penalty systems make much provision, if any, for determining the extent to which sanctions are carried out and work. What is the core of a compliance system--the assurance that whatever action is taken works in bringing about the compliance objective--is only presumed in a penalty law enforcement system. This rather critical difference has enormous implications for what information is collected and utilized in the two types of systems. There is a great deal of difference between proving that a violation occurred and determining whether something is safe.

Moreover, compliance in penalty systems can come about only after one has been able to detect and prove each specific violation, a condition that is difficult to attain. And, penalty systems are substantially dependent upon the rate of detection for any general deterrent effect. Compliance systems, by contrast, presume that there are ways to prove compliance independent of proving any specific

violation. Each individual violation and hence each specific instance of behavior thus is of more consequence for penalty than for compliance systems. Even where the goal is to prevent a rare event of harm that is expected to have grave consequences, a compliance system seeks to reduce the likelihood that it will occur, whereas a penalty system seeks to increase the likelihood a violation will be detected or to increase the severity of punishment when the violation is proven.

Finally, there are differences in the way that compliance and penalty systems regard victims. Compliance systems appear to be concerned with victims in some aggregate rather than in a discrete or specific sense while penalty systems must deal with victims in the concrete since they constitute an element in their system of proof. Although consequences for victims may be taken into account in the severity of the charges and in proving that the consequences are severe, victims play a quite different role in criminal as compared with civil or administrative penalty systems. The criminal penalty system denies victims the participating roles that are granted them in civil penalty systems. One may have learned something of what happened to victims in a criminal penalty system, but they are treated as objects rather than subjects. We can expect, therefore, that information on victims will depend upon how any given penalty system is organized. Although little is known about such matters, one might assume that civil law proceedings provide more information on victims as plaintiffs than do either administrative or criminal proceedings with the least information available on victims in criminal proceedings.

Penalty Information Systems. Where the main objective of an operating system is enforcement of the law, the case investigation dominates the proceedings, with findings of fact as to whether a violation has occurred and the referral of the case for litigation or criminal prosecution or the assessment of administrative penalties. Although a sizeable number of agencies have administrative proceedings with the power to sanction offenders, most are limited to either initiating civil proceedings or referring the case for civil litigation or criminal prosecution.

Merging Information From Penalty Systems. There are several ways that information about law enforcement systems of different agencies could possibly be merged. The main ways of doing so are in terms of (1) comparable stages in a decision making process, e.g., complaint, investigation, civil litigation, criminal referral, case filing, and adjudication; (2) comparability in violations charged; and (3) comparability of sanctions imposed. The problems of achieving comparability in merging information for different agencies are considerable.

Merging Information for Comparable Decision Stages. It is quite apparent that information is more likely to be merged for the late than the early stages of a law enforcement process. If one thinks of criminal prosecution and criminal court proceedings as the late stages of a law enforcement process, it is at those points that information from diverse agencies is merged for reporting because all criminal matters must be referred for criminal prosecution to a U.S. Attorney and he in turn has the responsibility for all case filings in a U.S. District Court. Both the annual Statistical Report of the United States Attorney's Offices and that of the Director of the Administrative Office of the U.S. Courts report information on referrals and/or case filings by type of violation for main classes of crimes.

If one examines the tables reporting all criminal referrals and case filings by U.S. Attorney's offices or U.S. District Courts, or those for major types of criminal violation, several problems are apparent in attempting to merge data from these many sources. First, it is clear that there is considerable variability in the number and kind of referrals among the 94 U.S. Attorney's offices in the United States. Second, since U.S. Attorneys handle a considerable volume of ordinary and organized crime as well as white-collar crimes, it is difficult to determine how many of the cases reported for any crime category are relevant to our definition (or for that matter more conventional definitions) of white-collar crime since the crime classes are those of legal penalty statutes. Third, the aggregated data do not take into account the different contributions of agencies to the aggregated statistics.

The reader can gain some sense of this problem from the difficulty in determining which of the 116 violation categories reported in Table 5.17 might qualify as white-collar crimes. What is apparent is that the U.S. Attorneys are able to classify all matters referred to them in some criminal violation category even when the cases are terminated without a case filing. Table 5.17 also shows that one can follow cases filed and terminated without a court disposition and, for case filings on defendants, one can follow their court disposition in terms of major adjudication outcomes.

TABLE 5-17
CRIMINAL CASES AND DEFENDANTS IN UNITED STATES DISTRICT COURT BY OFFENSE
FISCAL YEAR 1978

OFFENSE	FILED	TERM.	DEPTS		DISPOSITIONS OF DEFENDANTS IN TERMINATED CASES					
			FILED	TERM.	GUILTY	NOT GUILTY	DISMISSED	RULE 20	OTHER	
ACCESSORY AFTER THE FACT	40	53	57	62	40	5	0	1	2	
AIDERS AND ABETTORS	108	207	301	414	203	15	00	12	10	
ANIMAL HEALTH										
PROTECTION OF HORSES	1	1	1	1	0	0	1	0	0	
QUARANTINE	1	1	1	1	0	0	1	0	0	
TRANSPORTATION OF RESEARCH ANIMALS	1	1	1	1	0	0	1	0	0	
ANTI-RACKETEERING	91	127	311	400	222	23	69	3	02	
ANTI-TRUST	200	236	697	561	271	32	150	3	00	
BAIL	22	26	75	153	104	11	31	0	7	
BANK ROBBERY	207	411	375	421	264	3	100	27	19	
BANKRUPTCY	1,013	1,770	2,015	2,217	1,004	45	206	112	209	
BANKS AND BANKING	57	45	83	59	37	4	14	2	2	
BETRAYAL OF OFFICE	1,203	1,202	1,011	1,025	1,003	25	230	53	46	
BRIBE	107	153	170	157	126	6	20	0	5	
CARRIERS AND TRANSPORTATION	120	127	150	159	108	9	24	2	10	
AIR CARRIERS AND AVIATION	63	50	45	50	33	1	10	2	2	
MOTOR COMMERCIAL VEHICLES	131	115	143	121	107	2	7	3	2	
NAVIGATION AND NAVIGABLE WATERS	4	7	4	10	2	1	0	0	0	
RAILROADS AND PIPELINE CARRIERS	4	7	4	10	2	1	0	0	0	
SHIPPING (INCL CRIMES ON / OVER THE HIGH SEAS)	1,003	1,000	1,020	1,003	1,015	00	215	32	67	
STOWAWAYS ON VESSELS OR AIR	2	1	3	1	1	0	0	0	0	
TRANSPORTATION OF SPECIFIC ITEMS	12	10	15	19	14	2	2	1	4	
CITIZENSHIP AND NATIONALITY	100	107	102	171	150	3	9	2	1	
CIVIL RIGHTS	47	33	69	34	20	13	15	0	0	
COMMUNICATIONS	40	50	51	50	43	3	4	0	0	
CONFLICT OF INTEREST	2	4	3	5	1	2	1	0	1	
CONSERVATION AND CONTROL OF FEE LANDS & RESOURCES	175	104	432	252	130	9	100	1	0	
CONSERVATION OF NATURAL RESOURCES										
BIRDS	295	300	432	407	309	22	44	4	20	
ENDANGERED SPECIES	11	9	17	15	9	0	5	1	0	
FISHING VIOLATIONS	20	33	39	43	31	1	10	0	1	
GAME	23	30	70	66	33	0	25	2	4	
POLLUTION	17	10	22	24	10	0	6	0	0	
CONSPIRACY	002	034	1,010	1,005	1,220	09	370	32	190	
CONSUMER PROTECTION										
AGRICULTURE	4	6	5	5	3	2	0	0	0	
AGRICULTURAL ADJUSTMENT ACT	1	1	1	1	1	0	0	0	0	
AGRICULTURE INSPECTION CERTIFICATES	0	1	0	1	1	0	0	0	0	
COMMODITY EXCHANGE ACT	0	1	2	1	1	0	0	0	0	
PACKERS AND STOCKYARDS ACT	1	1	1	1	1	0	0	0	0	
PLANT QUARANTINE AND PESTS	1	1	1	1	1	0	0	0	0	
FEDERAL TRADE COMM. & COMMERCIAL REGULATIONS	1	0	2	1	0	0	0	0	0	
FEDERAL TRADE COMMISSION LABELING	1	0	1	1	1	0	0	0	0	
MISCELLANEOUS FOOD	0	0	1	1	1	0	0	0	0	
FILLED MILK ACT & MISLABELED DAIRY PRODUCT	21	23	40	42	30	0	11	0	1	
MEAT INSPECTION ACT	4	3	10	7	4	0	3	0	0	
POULTRY INSPECTION	0	0	0	0	0	0	0	0	0	
OTHER PROTECTION	72	70	50	84	40	0	21	12	5	
CONSUMER CREDIT PROTECTION ACT	774	002	1,000	1,257	700	49	230	35	134	
MAIL AND WIRE FRAUD										
SECURITIES FRAUDS	1	0	1	0	0	0	0	0	0	
INVESTMENT ADVISERS ACT OF 1940	0	2	0	0	0	1	1	0	0	
INVESTMENT COMPANY ACT OF 1940	23	25	25	50	47	3	0	0	2	
SECURITIES EXCHANGE ACT OF 1934	25	26	25	50	31	0	13	0	0	
SECURITIES FRAUDS	125	100	100	122	62	0	31	2	19	
CONTENT	5,290	4,494	0,237	0,457	5,401	249	2,400	204	975	
CONTROLLED SUBSTANCES	56	00	71	103	75	4	22	3	4	
COPYRIGHT	755	051	951	1,100	774	32	195	51	57	
COUNTERFEITING-MISUSE/MONEY STAMPS	2,091	2,003	3,115	3,315	2,012	41	497	106	59	
CRIMES AFFECTING THE MAILS	0	10	0	11	0	0	0	1	0	
CRIMES AFFECTING THE MILITARY/MERCHANT MARINE	15	14	10	11	9	0	0	1	0	
CRIMES BY AND AGAINST INDIANS										
CUSTOMS	154	105	200	257	152	0	71	14	12	
CUSTOMS LAWS	0	2	0	3	0	0	3	0	0	
EXPORT CONTROL	21	20	20	20	20	0	3	2	3	
ELECTIONS AND POLITICAL ACTIVITIES	172	151	103	150	134	3	13	5	2	
EMBELLISHMENT	505	730	614	704	537	11	144	49	43	
ESCAPE	7	2	10	4	2	0	2	0	0	
ESPIONAGE AND CENSORSHIP	100	125	145	171	90	10	37	3	25	
EXTORTION	0	2	5	2	0	0	2	0	0	
EXTRADITION										

- 1/ EXCLUDES 1228 CASES ON 1232 DEFENDANTS INITIATED BY TRANSFER UNDER RULE 20
2/ INCLUDES 1228 CASES ON 1232 DEFENDANTS TERMINATED BY TRANSFER UNDER RULE 20
AND 1232 CASES ON 1232 DEFENDANTS DISMISSED BECAUSE OF SUPERSEDING INDICTMENTS OR INFORMATION
3/ INCLUDES 12 VICTIMS OF NOT GUILTY BY REASON OF INSANITY INVOLVING 18 DEFENDANTS
4/ INCLUDES 1232 APPELLATE DEFENDANTS DISMISSED IN FAVOR OF THE U.S.
5/ INCLUDES DEFENDANTS INVOLVED IN APPELLATE DECISIONS AND PROCEEDINGS SUSPENDED INDEFINITELY BY COURT

SOURCE: United States Department of Justice. Statistical Report, United States Attorneys' Offices, Fiscal Year, 1978. Washington, D. C.: U.S. Government Printing Office, 1979.

TABLE 5-17 CONTINUED
CRIMINAL CASES AND DEFENDANTS IN UNITED STATES DISTRICT COURT BY OFFENSE
FISCAL YEAR 1978

OFFENSE	FILED	TERM.	DEPTS		DISPOSITIONS OF DEFENDANTS IN TERMINATED CASES					
			FILED	TERM.	GUILTY	NOT GUILTY	DISMISSED	RULE 20	OTHER	
FEDERAL CUSTOMS	33	55	61	66	30	5	7	1	14	
FOOD, DRUG, AND COSMETIC ACT	0	0	15	10	12	0	2	0	0	
FOREIGN AGENT REGISTRATION ACT	0	2	3	5	3	0	2	0	0	
FOREIGN POLICY IMPAIRMENT	3	2	3	2	2	0	0	0	0	
FORFEIT & MISUSE OF OFFICIAL INSIGNIA & DOCUMENTS	20	10	22	10	12	0	3	0	1	
FRAUD AGAINST THE GOVERNMENT	2,000	2,952	3,400	3,570	2,023	67	644	101	00	
INJURY TO OR INTERFERENCE WITH GOVT. PROPERTY	41	44	53	62	30	0	15	1	2	
IMMIGRATION	1,000	1,703	2,402	2,704	1,750	22	421	20	45	
IMPERSONATION	30	30	42	44	27	3	10	1	3	
INCOME TAX	1,557	1,540	1,000	1,714	1,237	72	211	70	146	
INTEGRITY OF FEDERAL PROGRAMS										
BAYNEBROOK-JONES FARM TENANT ACT	0	3	0	3	0	0	0	0	3	
COMMODITY CREDIT CORPORATION CHARTER ACT	0	1	17	9	0	0	0	0	0	
ECONOMIC OPPORTUNITY AMENDMENTS OF 1967	11	0	13	10	7	0	3	0	0	
FOOD STAMP PROGRAM	130	121	172	150	110	1	20	0	0	
GOLD HOARDING	1	1	1	1	1	0	0	0	0	
GRATUITIES ACT	0	1	0	1	0	0	0	0	1	
HOUSING	0	2	4	5	1	0	4	0	0	
KICKBACKS PUBLIC WORKS EMPLOYEES	2	2	3	3	1	1	1	0	0	
MOTOR VEHICLE EMISSION STANDARDS	0	1	0	1	0	0	1	0	0	
SMALL BUSINESS ACT	0	10	0	10	0	0	2	1	0	
SOCIAL SECURITY ACT	104	107	101	100	122	5	32	3	0	
INTERFERENCE WITH GOVERNMENT OFFICERS	250	276	273	325	101	10	113	4	32	
INTER-STATE LAND SALES	1	2	11	10	1	0	13	0	0	
JURISDICTIONAL STATUTES	1,127	1,107	1,204	1,203	614	40	314	23	92	
JUVENILE DELINQUENCY	127	129	147	151	107	1	41	1	1	
KIDNAPPING	100	127	200	100	96	13	29	10	22	
LABOR LAWS	90	70	100	96	60	7	12	2	0	
LIQUOR STATUTES										
INTERNAL REVENUE SERVICE LIQUOR VIOLATIONS	120	133	157	104	120	3	30	0	3	
MAGISTRATE TRIALS	3	3	3	3	2	0	0	0	1	
MISPRISON OF FELONY	62	62	65	67	50	0	4	5	0	
MOTOR VEHICLE THEFT	705	900	950	1,200	000	40	150	114	00	
OBSCENE OR HARASSING TELEPHONE CALLS	4	4	5	6	3	0	0	1	0	
OBSCENITY	44	52	62	93	41	0	20	12	12	
OBSTRUCTION OF JUSTICE	130	132	172	172	05	0	62	2	14	
OCCUPATIONAL TAX ON GAMBLERS	0	0	14	10	11	0	3	0	0	
OTHER CRIMES OF VIOLENCE	250	271	291	300	170	19	60	4	39	
OTHER STOLEN PROPERTY	020	1,037	1,122	1,373	063	52	205	140	113	
PASSPORTS AND VISAS	126	124	130	140	133	4	20	0	5	
PERJURY	134	104	140	174	92	12	44	2	24	
PROBATION	3	4	3	4	2	0	2	0	0	
PROSTITUTION	10	20	10	23	6	0	0	0	0	
PROTECTION OF WORKING MEN										
FAIR LABOR STANDARDS ACT	0	1	0	1	1	0	0	0	0	
MINE AND MINING	3	2	3	2	0	0	0	0	2	
RAILROAD LABOR ACT	0	1	0	4	0	0	0	0	4	
RAILROAD UNEMPLOYMENT INSURANCE ACT	0	0	5	4	3	0	1	0	0	
UNEMPLOYMENT COMPENSATION FEDERAL EMPLOYEES	0	0	0	0	0	0	0	1	0	
SABOTAGE	0	1	0	1	0	0	1	0	0	
SELECTIVE SERVICE	0	100	0	104	4	0	100	2	0	
THEFT OF GOVERNMENT PROPERTY	031	040	1,057	1,072	754	27	209	30	44	
TREASON, SEDITION AND SUBVERSIVE ACTIVITIES	1	1	1	1	0	0	1	0	0	
VETERANS CLAIMS	93	95	94	95	41	3	50	0	1	
WEAPONS CONTROL	2,005	3,145	3,300	3,001	2,504	115	050	99	233	
WRECKFUL ACTS	3	3	3	3	2	0	3	0	0	
ALL OTHER	197	212	252	277	172	10	50	0	22	
TOTALS	32,007	34,714	44,132	46,925	31,407	1,300	9,300	1,531	3,306	

- 1/ EXCLUDES 1228 CASES ON 1232 DEFENDANTS INITIATED BY TRANSFER UNDER RULE 20
2/ INCLUDES 1228 CASES ON 1232 DEFENDANTS TERMINATED BY TRANSFER UNDER RULE 20
AND 1232 CASES ON 1232 DEFENDANTS DISMISSED BECAUSE OF SUPERSEDING INDICTMENTS OR INFORMATION
3/ INCLUDES 12 VICTIMS OF NOT GUILTY BY REASON OF INSANITY INVOLVING 18 DEFENDANTS
4/ INCLUDES 1232 APPELLATE DEFENDANTS DISMISSED IN FAVOR OF THE U.S.
5/ INCLUDES DEFENDANTS INVOLVED IN APPELLATE DECISIONS AND PROCEEDINGS SUSPENDED INDEFINITELY BY COURT

These levels of aggregation mask altogether the contribution that any given agency makes to criminal referrals; indeed, since many criminal referrals to U.S. Attorneys are made only after an agency has referred the case to the FBI for a criminal investigation, the U.S. Attorneys' file treats the FBI as the source of referral rather than the originating agency. We have compiled by special tabulation the major types of criminal referrals for major agencies referring matters to U.S. Attorneys. These are reported in Table 5.18a to Table 5.18p. (The reader will note that the percent of matters or cases terminated may exceed 100 percent; this is owing both to inaccuracies in the data and to our reclassification of matters originally placed in another violation category.)

What will be immediately apparent is that most referral agencies (other than the FBI) make very little contribution, if any, to most of the violation categories reported for the aggregated information in Table 5.17. Beginning with Table 5.18a which includes referrals from the Department of Agriculture of five or more cases in any violation category, one notes that most of these referrals are specific to Agriculture's mandate. There is no overlap of these categories with those reported for the U.S. Customs Bureau in Table 5.18c, for example, or with the categories in most other tables in this series. Indeed, what may be surprising is that most of the criminal matters any given agency refers to a U.S. Attorney are ones that are peculiar to that agency alone or else to that agency and one or two others. The Immigration and Naturalization Service, for example, refers mainly matters dealing with illegal immigration, passports and visas, and citizenship and nationality, matters that do not arise very often for any other federal agency. Inasmuch as the FBI is largely a surrogate investigative body for many federal agencies, the referrals from the FBI to U.S. Attorneys (Table 5.18e) cover a much broader range of offenses, many of which fit more conventional definitions of both ordinary and white-collar crimes. Parenthetically, we note that these tables disclose considerable variation among agency contributions to case filings, using the matters each agency referred for criminal prosecution as a base--a pattern that was considered earlier by Rabin (1972).

Although the criminal information files of the U.S. Attorneys and the Administrative Office of the U.S. Courts do not lend themselves to our proposed definition of white-collar violations of law, they do include broad categories of offenses, such as conspiracy, embezzlement, or fraud. These files also are less useful if one chooses to include those civil matters brought by U.S. Attorneys for litigation in the U.S. Courts that would fall within our definition or a more conventional one. Of

TABLE 5.18A

PERCENT DISTRIBUTION OF 1975 MATTERS RECEIVED BY U.S. ATTORNEYS IN YEARS
1975-1979 ON REFERRAL FROM AGRICULTURE BY VIOLATION CATEGORY

Violation Category	Number of Matters Received 1975	Percent Category of Violation of All 1975 Matters Received	Percent Matters Terminated of Matters Received	Percent Cases Filed of Matters Received	Percent Cases Terminated of Cases Filed
No Violation Category	15	26	67	33	40
Fraud against Government	62	11	73	23	93
Food Stamp Program	384	65	53	39	94
Packers and Stockyards Act	11	2	73	27	67
Agricultural Adjustment Act	11	2	64	9	200
Meat Inspection Act	20	3	55	25	120
Quarantine	38	6	63	37	107
Embezzlement	6	1	100	0	0
All Other Violation Categories ¹	40	7	85	78	106

¹Includes those violation categories with less than 5 Matters Received in 1975.

SOURCE: Special Tabulation, United States Department of Justice

TABLE 5.18B

PERCENT DISTRIBUTION OF 1975 MATTERS RECEIVED BY U.S. ATTORNEYS IN YEARS
1975-1979 ON REFERRAL FROM THE COAST GUARD BY VIOLATION CATEGORY

Violation Category	Number of Matters Received 1975	Percent Category of Violation of All 1975 Matters Received	Percent Matters Terminated or Matters Received	Percent Cases Filed of Matters Received	Percent Cases Terminated or Cases Filed
No Violation Category	6	9	50	50	67
Fishing Violations	7	11	0	100	100
Pollution	40	62	60	33	92
All Other Violation Categories ¹	12	18	117	8	300

¹Includes those violation categories with less than 5 Matters Received in 1975.

SOURCE: Special Tabulation, United States Department of Justice.

TABLE 5.18C

PERCENT DISTRIBUTION OF 1975 MATTERS RECEIVED BY U.S. ATTORNEYS IN YEARS
1975-1979 ON REFERRAL FROM THE CUSTOMS BUREAU BY VIOLATION CATEGORY

Violation Category	Number of Matters Received 1975	Percent Category of Violation of All 1975 Matters Received	Percent Matters Terminated of Matters Received	Percent Cases Filed of Matters Received	Percent Cases Terminated of Cases Filed
No Violation Category	97	10	29	46	56
Controlled Substances	182	19	17	80	93
Conspiracy	38	4	32	61	91
Theft of Government Property	5	1	60	40	50
Other Crimes of Violence	9	1	11	89	100
Weapons Control	67	7	63	36	96
Fraud Against Government	40	4	53	43	100
Interference with Government Prop.	52	5	44	56	97
Obstruction of Justice	15	2	7	127	89
Shipping	54	6	28	70	100
Immigration	8	1	13	75	100
Customs Laws	306	32	40	45	83
Jurisdictional Statutes	30	3	13	90	100
Tax	7	1	0	114	88
All Other Violation Categories ¹	59	6	95	93	142

¹Includes those violation categories with less than 5 Matters Received in 1975.

SOURCE: Special Tabulation, United States Department of Justice.

TABLE 5.13D

PERCENT DISTRIBUTION OF 1975 MATTERS RECEIVED BY U.S. ATTORNEYS IN YEARS 1975-1979 ON
REFERRAL FROM THE ENVIRONMENTAL PROTECTION AGENCY BY VIOLATION CATEGORY

Violation Category	Number of Matters Received 1975	Percent Category of Violation of All 1975 Matters Received	Percent Matters Terminated of Matters Received	Percent Cases Filed of Matters Received	Percent Cases Terminated of Cases Filed
No Violation Category	14	14	57	21	100
Conservation and Control of Federal Lands & Resources	23	23	52	17	25
Motor Vehicle Emission Standards	6	6	33	67	75
Federal Insecticide Etc. Act	11	11	64	36	100
Pollution	47	46	55	40	100
All Other Violation Categories ¹	1		800	100	400

¹Includes those violation categories with less than 5 Matters Received in 1975.

SOURCE: Special Tabulation, United States Department of Justice.

Table 1. Violations of Federal Laws and Regulations by U.S. Citizens
in Years 1975, 1976 and 1977 from the FBI's Criminal Inquiry

Violation Category	Number of Violations in 1975	Percent Category of Violations of All 1975	Percent Category of Violations of All 1975	Percent Category of Violations of All 1975	Percent Category of Violations of All 1975
No Violation Category	315	1	50	37	95
Anti-Godding	296	1	37	57	47
Labor Laws	170	0	48	33	43
Controlled Substances	315	1	34	64	101
Anti-Riot Testing	450	2	40	33	46
Organizational Tax on Gamblers	11	0	0	100	100
Crimes by and against Indians	17	0	41	53	100
Counterfeiting	92	0	45	50	96
Community	102	0	71	29	90
Motor Vehicle Theft	2701	7	34	64	97
Corruption	554	1	74	77	46
Obstruction and Control of Federal Lands & Resources	150	0	40	35	110
Interference with Government Prop.	63	0	49	46	100
Theft of Government Property	1018	3	45	52	97
Other Stolen Property	3165	8	39	54	97
Extortion	484	1	60	33	91
Kidnapping	245	1	34	56	87
Bank Robbery	3442	10	73	75	96
Other Crimes of Violence	400	1	40	63	95
Weapons Control	194	1	39	59	110
Fraud against Government	1218	3	63	33	96
Crimes affecting Merchant/Military					
Postage	17	0	82	12	100
Crimes affecting the Mails	91	0	41	51	96
Interference with Govt. Officers	260	1	35	62	97
Perjury of Office	30	0	47	43	52
Perjury	274	1	34	51	95
Conflict of Interest	16	0	75	0	0
Perjury of Office	189	0	53	43	53
Perjury of Office					
Perjury of Office	89	0	49	31	96
Obstruction of Justice	135	0	50	46	92
Perjury	194	1	74	71	94
Perjury	6494	18	81	13	95
Railway Labor Act	6	0	83	17	0
Social Security Act	9	0	400	157	247
Small Business Act	45	0	49	24	83
Food Stamp Program	5	0	60	20	100
Consumer Opportunities					
Appointments of 1947	13	0	23	49	49
Automobile Information					
Disclosure Act	10	0	70	30	100
Mail and Wire Fraud	442	1	37	57	44
Securities Fraud	6	0	33	83	80
Consumer Credit Protection Act	5	0	40	60	100
Art Carriers and Auction	214	1	49	33	69
Shipment	1717	5	36	62	94
Motor Commercial Vehicles	23	0	78	11	75
Railroads & Pipeline Carriers	23	0	74	70	100
Seaways	28	0	64	32	100
Explosives	26	0	54	12	100
Selective Service	912	2	82	14	96
Prostitution	145	0	55	41	92
Immigration	20	0	75	70	93
Passports and Visas	56	0	74	69	67
Customs Laws	16	0	54	56	67
Copyright	299	1	65	27	98
Game	7	0	86	14	100
Communications	116	0	70	29	100
Citizenship & Nationality	6	0	47	33	100
Rail	231	2	47	78	77
Banks and Banking	3152	8	47	49	97
Unemployment	175	0	34	66	97
Veterans Claims	9	0	100	22	100
Bankruptcy	204	1	55	14	47
Electronics & Political Activities	43	0	63	33	88
Civil Rights	1771	5	91	3	91
Accessory after the Fact	54	0	74	76	93
Obstruction of Justice	39	0	15	85	100
Justification Statutes	2513	7	78	49	99
Contempt	48	0	15	73	72
Admiral and Masters	70	0	29	69	104
Federal Custody	69	0	23	77	100
Anti-Riot Laws	20	0	75	35	100
Obstruction of Justice					
Telephone Calls	13	0	62	38	60
Telephone Disruption	179	0	32	66	98
Intimidation	12	0	67	25	100
Intimidation	16	0	100	0	0
State Crime the Tax	12	0	0	100	75
Admission	26	0	54	34	80
Arrest	18	0	39	54	100
Anglo	4	0	67	17	100
Luxury	4	0	50	34	100
Antony	18	0	60	20	100
Tax	49	0	18	75	100
Knockout	5	0	0	100	0
All Other Violations Reported 1977	71	0	141	53	251

1. In 1975, there were 4,000 violations of the law reported to the FBI.

2. In 1976, there were 4,000 violations of the law reported to the FBI.

TABLE 5.18F

PERCENT DISTRIBUTION OF 1975 MATTERS RECEIVED BY U.S. ATTORNEYS IN YEARS 1975-1979
ON REFERRAL FROM THE FISH AND WILDLIFE SERVICE BY VIOLATION CATEGORY

Violation Category	Number of Matters Received 1975	Percent Category of Violation of All 1975 Matters Received	Percent Matters Terminated or Matters Received	Percent Cases Filed of Matters Received	Percent Cases Terminated of Cases Filed
No Violation Category	31	2	268	6	100
Conservation and Control of Federal Lands & Resources	30	2	70	13	100
Birds	1126	87	51	46	100
Game	43	3	33	51	100
Fishing Violations	9	1	33	89	100
Endangered Species	22	2	45	41	100
Jurisdictional Statutes	11	1	73	27	100
Magistrate Trials	6	0	100	0	100
All Other Violation Categories ¹	13	1	85	69	111

¹Includes those violation categories with less than 5 Matters Received in 1975.

SOURCE: Special Tabulation, United States Department of Justice.

TABLE 5.18G

PERCENT DISTRIBUTION OF 1975 MATTERS RECEIVED BY U.S. ATTORNEYS IN YEARS 1975-1979
ON REFERRAL FROM THE FOOD AND DRUG ADMINISTRATION BY VIOLATION CATEGORY

Violation Category	Number of Matters Received 1975	Percent Category of Violation of All 1975 Matters Received	Percent Matters Terminated of Matters Received	Percent Cases Filed of Matters Received	Percent Cases Terminated of Cases Filed
Controlled Substances	45	73	16	84	95
Social Security Act	6	10	67	50	100
All Other Violation Categories ¹	11	18	65	10	100

¹Includes those violation categories with less than 5 Matters Received in 1975.

SOURCE: Special Tabulation, United States Department of Justice.

TABLE 5.18H

PERCENT DISTRIBUTION OF 1975 MATTERS RECEIVED BY U.S. ATTORNEYS IN YEARS 1975-1979
ON REFERRAL FROM HEALTH, EDUCATION, AND WELFARE BY VIOLATION CATEGORY

Violation Category	Number of Matters Received 1975	Percent Category of Violation of All 1975 Matters Received	Percent Matters Terminated of Matters Received	Percent Cases Filed of Matters Received	Percent Cases Terminated of Cases Filed
No Violation Category	9	9	78	33	33
Fraud against Government	22	23	55	32	86
Social Security Act	35	36	86	6	150
Food Stamp Program	12	13	83	0	0
All Other Violation Categories ¹	18	19	67	33	28

¹Includes those violation categories with less than 5 Matters Received in 1975.

SOURCE: Special Tabulation, United States Department of Justice.

TABLE 5.181

PERCENT DISTRIBUTION OF 1975 MATTERS RECEIVED BY U.S. ATTORNEYS IN YEARS
1975-1979 ON REFERRAL FROM THE IRS INCOME TAX UNIT BY VIOLATION CATEGORY

Violation Category	Number of Matters Received 1975	Percent Category of Violation of All 1975 Matters Received	Percent Matters Terminated of Matters Received	Percent Cases Filed of Matters Received	Percent Cases Terminated of Cases Filed
No Violation Category	11	1	0	64	57
Anti-Racketeering	67	7	99	1	100
Conspiracy	16	1	25	63	100
Weapons Control	6	0	33	67	100
Fraud against Government	139	3	27	63	99
Interference with Govt. Officers	45	3	36	56	84
Bribery	44	3	18	82	89
Conflict of Interest	5	0	40	0	0
Obstruction of Justice	6	0	67	33	100
Perjury	10	1	30	70	86
Bail	5	0	60	40	100
Income Tax	1229	75	11	86	95
All Other Violation Categories ¹	29	2	28	55	94

¹Includes those violation categories with less than 5 Matters Received in 1975.

SOURCE: Special Tabulation, United States Department of Justice.

TABLE 5.18J

PERCENT DISTRIBUTION OF 1975 MATTERS RECEIVED BY U.S. ATTORNEYS IN YEARS
1975-1979 ON REFERRAL FROM OTHER IRS BY VIOLATION CATEGORY

Violation Category	Number of Matters Received 1975	Percent Category of Violation of All 1975 Matters Received	Percent Matters Terminated of Matters Received	Percent Cases Filed of Matters Received	Percent Cases Terminated of Cases Filed
No Violation Category	8	3	75	25	100
Anti-Racketeering	7	3	57	43	67
IRS Liquor Violations	5	2	20	80	100
Kidnapping	9	4	11	88	88
Weapons Control	50	22	24	72	103
Fraud against Government	15	6	33	60	100
Interference with Govt. Officers	20	9	50	30	83
Tax	94	41	14	88	98
All Other Violation Categories ¹	23	10	35	52	92

¹Includes those violation categories with less than 5 Matters Received in 1975.

SOURCE: Special Tabulation, United States Department of Justice.

TABLE 5.18K
PERCENT DISTRIBUTION OF 1975 MATTERS RECEIVED BY U.S. ATTORNEYS IN YEARS 1975-1979
ON REFERRAL FROM IMMIGRATION AND NATURALIZATION BY VIOLATION CATEGORY

Violation Category	Number of Matters Received 1975	Percent Category of Violation of All 1975 Matters Received	Percent Matters Terminated of Matters Received	Percent Cases Filed of Matters Received	Percent Cases Terminated of Cases Filed
Controlled Substances	5	0	0	100	100
Conspiracy	111	2	33	67	86
Fraud against Government	102	2	25	70	92
Escape	6	0	33	67	75
Immigration	3722	6	57	42	95
Passports and Visas	310	6	41	59	98
Citizenship and Nationality	421	9	54	46	98
Ball	20	0	70	20	17
Accessory after the Fact	35	1	89	11	100
Jurisdictional Statutes	7	0	0	100	100
Aiders and Abettors	121	2	80	19	91
Juvenile Delinquency	13	0	8	85	82
All Other Violation Categories ¹	24	1	54	71	141

¹Includes those violation categories with less than 5 Matters Received in 1975.

SOURCE: Special Tabulation, United States Department of Justice.

TABLE 5.1/L

PERCENT DISTRIBUTION OF 1975 MATTERS RECEIVED BY U.S. ATTORNEYS IN YEARS
1975-1979 ON REFERRAL FROM THE POST OFFICE BY VIOLATION CATEGORY

Violation Category	Number of Matters Received 1975	Percent Category of Violation of All 1975 Matters Received	Percent Matters Terminated of Matters Received	Percent Cases Filed of Matters Received	Percent Cases Terminated of Cases Filed
No Violation Category	30	0	30	63	84
Anti-Gambling	9	0	78	0	0
Controlled Substances	71	1	30	66	98
Anti-Racketeering	5	0	60	0	0
Counterfeiting	203	3	31	67	97
Obscenity	98	1	33	48	49
Conspiracy	96	1	17	83	85
Conservation and Control of Federal Lands & Resources	38	0	76	16	100
Injury to Government Property	15	0	60	40	100
Theft of Government Property	306	4	26	72	96
Extortion	32	0	38	53	94
Other Crimes of Violence	20	0	50	35	100
Weapons Control	19	0	21	74	100
Fraud against Government	328	4	30	66	94
Crimes affecting the Mails	4856	65	37	63	97
Interference with Govt. Officers	69	1	52	43	87
Betrayal of Office	149	2	32	65	97
Obstruction of Justice	8	0	50	50	75
Perjury	7	0	0	100	86
Escape	6	0	50	33	150
Mail and Wire Fraud	959	13	31	55	86
Consumer Credit Protection Act	22	0	23	77	106
Shipping	6	0	216	150	311
Bail	25	0	20	76	84
Banks and Banking	10	0	40	60	83
Jurisdictional Statutes	10	0	70	30	67
Aiders and Abettors	44	1	25	71	100
Juvenile Delinquency	34	0	32	68	96
All Other Violation Categories ¹	43	1	163	112	165

¹Includes those violation categories with less than 5 Matters Received in 1975.

SOURCE: Special Tabulation, United States Department of Justice.

TABLE 5.18M

PERCENT DISTRIBUTION OF 1975 MATTERS RECEIVED BY U.S. ATTORNEYS IN YEARS
1975-1979 ON REFERRAL FROM THE SECRET SERVICE BUREAU BY VIOLATION CATEGORY

Violation Category	Number of Matters Received 1975	Percent Category of Violation of All 1975 Matters Received	Percent Matters Terminated of Matters Received	Percent Cases Filed of Matters Received	Percent Cases Terminated of Cases Filed
No Violation Category	14	0	50	57	100
Counterfeiting	1380	24	29	68	97
Conspiracy	123	2	12	92	88
Theft of Government Property	205	4	46	53	96
Other Stolen Property	12	0	25	75	100
Fraud against Government	3136	54	28	68	98
Crimes affecting the Mails	698	12	38	62	99
Interference with Govt. Officer	68	1	54	43	90
Obstruction of Justice	12	0	75	25	100
Perjury	7	0	14	86	100
Selective Service	5	0	60	0	0
Bail	20	0	15	80	94
Banks and Banking	6	0	17	83	100
Misprison by Felony	10	0	0	100	100
Jurisdictional Statutes	5	0	40	60	100
Aiders and Abettors	38	1	26	82	90
Juvenile Delinquency	8	0	13	100	100
Tax	21	0	29	81	100
All Other Violation Categories ¹	27	0	19	115	103

¹Includes those violation categories with less than 5 Matters Received in 1975.

SOURCE: Special Tabulation, United States Department of Justice.

TABLE 5.18W
PERCENT DISTRIBUTION OF 1975 MATTERS RECEIVED BY U.S. ATTORNEYS IN YEARS 1975-1979 ON
REFERRAL FROM THE SECURITIES AND EXCHANGE COMMISSION BY VIOLATION CATEGORY

Violation Category	Number of Matters Received 1975	Percent Category of Violation of All 1975 Matters Received	Percent Matters Terminated of Matters Received	Percent Cases Filed of Matters Received	Percent Cases Terminated of Cases Filed
Anti-Racketeering	6	7	67	0	0
Conspiracy	15	17	0	93	64
Mail and Wire Fraud	13	15	23	15	50
Securities Fraud	25	29	36	52	108
Contempt	9	10	0	89	75
All Other Violation Categories ¹	9	10	78	78	114

¹Includes those violation categories with less than 5 Matters Received in 1975.

SOURCE: Special Tabulation, United States Department of Justice.

TABLE 5.180
PERCENT DISTRIBUTION OF 1975 MATTERS RECEIVED BY U.S. ATTORNEYS IN YEARS
1975-1979 ON REFERRAL FROM THE SELECTIVE SERVICE BY VIOLATION CATEGORY

Violation Category	Number of Matters Received 1975	Percent Category of Violation of All 1975 Matters Received	Percent Matters Terminated of Matters Received	Percent Cases Filed of Matters Received	Percent Cases Terminated of Cases Filed
No Violation Category	5	1	40	20	100
Selective Service	772	99	81	16	97
All Other Violation Categories ¹	5	1	100	40	150

¹Includes those violation categories with less than 5 Matters Received in 1975.

SOURCE: Special Tabulation, United States Department of Justice.

TABLE 5.18P

PERCENT DISTRIBUTION OF 1975 MATTERS RECEIVED BY U.S. ATTORNEYS IN YEARS 1975-1979
ON REFERRAL FROM THE SOCIAL SECURITY ADMINISTRATION BY VIOLATION CATEGORY

Violation Category	Number of Matters Received 1975	Percent Category of Violation of All 1975 Matters Received	Percent Matters Terminated of Matters Received	Percent Cases Filed of Matters Received	Percent Cases Terminated of Cases Filed
No Violation Category	125	70	63	4	40
Conspiracy	10	2	40	60	100
Fraud against Government	109	8	61	34	105
Social Security Act	356	58	91	15	102
All Other Violation Categories ¹	16	2	69	56	100

¹Includes those violation categories with less than 5 Matters Received in 1975.

SOURCE: Special Tabulation, United States Department of Justice.

the 21 major causes of action reported annually in the U.S. Attorneys' Report (1979:Table 21) only two bear any reasonable resemblance to white-collar violations--frauds and tax actions other than lien. Examination of the data structure for the U.S. Attorneys' file discloses some additional causes of action that might be weighted heavily toward white-collar violations, e.g., civil penalties and forfeitures involving violation of laws relating to water pollution, injunction suits under various federal acts, and antitrust matters. Some assistance in separating offenses also is possible by using the Civil Program Codes in the file which specify types of litigation. But on the whole the files of the U.S. Attorneys and of the Administrative Office are of limited utility for sorting out white-collar violations of law.

So far as one can tell, only some of the Federal agencies provide detailed information on the nature of civil litigation and administrative actions as well as on the referral of criminal matters. One of the best examples of the kind of information available over a substantial period of time is of actions by the Antitrust Division of the U.S. Department of Justice (Tables 5.19 to 5.21). Although detailed information on types of antitrust violations is generally lacking, Table 5.21 presents what is currently available, classifying civil and criminal matters into broad categories of price-fixing, merger, and antimonopoly cases. In addition, Table 5.20 provides information separately for Consumer Affairs Proceedings, a responsibility of the Division. It would seem that a merged file might report matters for at least broad categories of actions for administrative, civil, and criminal matters. At the present time, there is little prospect of providing more detailed information on causes of action, except for a selected number of agencies such as the Antitrust Division of the U.S. Department of Justice or the SEC.

Returning to our earlier point--that merging information from agencies is less problematic where the system is organized to define and process matters at the late stages of a law enforcement processing system--it should be apparent also that it is more difficult to merge information from the earlier stages of the process, i.e., the initiation of a matter by complaint, investigation, or other means. In Chapter III, we noted that the definition of what constituted a complaint, investigation, or inquiry varied considerably among agencies. It would be a mistake even to attempt to compare and merge information among agencies without controlling for the initiation of investigations within a given time period, i.e., merging information for a cohort of cases entering the system during a given period of time. Returning to Tables 5.19 and 5.20, one can observe that the Antitrust Division has a substantial number of cases carried over at the end of a

TABLE 519: Status of Antitrust Investigations and Court Proceedings for Antitrust Division Cases,
U. S. Department of Justice, 1930-1970.

STATUS OF ANTITRUST CASES	YEAR																																																					
	1930	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979												
DISTRICT COURTS																																																						
pending first of year	13	13	17	24	30	35	36	45	57	63	66	79	87	104	115 ²	113	100	74	82	42	72	77	65	101	173	133	112	115	110	115	99	73	63	60	96	124	110	101	114	119	118	120	120	120	120	120	120							
filed	3	7	29	34	34	20	11	19	19	33	17	31	37	34	18	16	10	30	23	32	32	21	59	69	57	39	41	33	31	36	40	39	34	32	72	62	33	37	45	4	34	27	27	27	27	27	27	27						
terminated	3	3	23	22	35	17	6	5	13	16	10	23	20	31	10	23	48	24	45	21	27	33	23	35	1	65	30	30	35	52	66	31	49	44	24	30	45	24	40	13	36	40	40	40	40	40	40	40						
won	3	3	21	21	35	16	5	5	10	14	14	21	15	27	12	20	22	33	25	24	20	22	31	10	42	32	28	25	42	50	30	43	42	45	44	42	13	31	0	27	30	30	30	30	30	30	30	30						
lost	0	0	0	1	9	1	1	0	3	2	2	2	2	0	6	2	6	2	9	2	3	1	0	3	1	2	1	1	3	0	3	1	4	1	1	3	3	9	5	0	4	3	3	3	3	3	3	3	3	3				
disposed 1/	(-)	(-)	(-)	(-)	(-)	(-)	(-)	(-)	(-)	(-)	(-)	2	0	3	4	0	1	4	0	3	0	4	1	4	3	1	4	1	3	0	1	7	3	2	0	2	1	2	1	2	4	3	3	3	3	3	3	3	3	3				
pending end of year	13	17	24	30	35	36	43	57	63	66	79	87	104	109	113	100	74	82	42	72	77	65	101	111	135	112	115	110	115	99	73	63	60	96	124	110	101	114	119	118	120	120	120	120	120	120	120	120	120	120				
COURT OF APPEALS																																																						
pending first of year	0	1	0	1	2	4	4	5	0	0	2	2	5	3	2	5	1	2	1	5	5	3	1	1	0	4	2	1	1	2	1	1	2	4	2	3	1	2	1	0	4	4	11	11	11	11	11	11	11					
filed	1	0	2	2	2	2	5	0	0	2	1	0	3	3	4	0	2	1	5	3	2	2	5	0	4	5	0	4	3	1	1	4	3	4	2	1	3	3	10	0	13	13	13	13	13	13	13	13	13	13	13			
terminated	0	1	0	1	2	3	3	0	1	1	3	5	4	1	4	2	2	2	3	5	4	1	4	0	7	1	4	2	2	1	3	1	0	1	3	1	3	2	6	3	4	0	2	5	5	5	5	5	5	5				
won	0	(-)	0	(-)	2	2	6	4	0	0	1	2	4	4	0	2	2	2	1	5	0	4	1	3	2	5	0	2	2	2	1	0	1	3	1	4	3	2	3	2	5	5	5	5	5	5	5	5	5	5	5			
lost	0	(-)	0	(-)	0	3	3	1	0	1	0	1	1	(-)	1	2	0	0	1	0	5	0	0	1	1	2	1	2	0	0	0	0	1	0	3	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0				
disposed 1/	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--			
pending end of year	1	0	1	2	4	4	5	0	0	2	2	5	3	2	5	1	2	1	5	5	3	1	1	4	2	1	1	1	2	1	1	2	4	2	3	1	2	1	0	4	4	11	11	11	11	11	11	11	11	11	11			
STATE COURTS																																																						
pending first of year	1	2	2	2	0	3	6	5	4	4	8	2	3	4	5	2	0	3	3	4	4	3	1	3	3	12	6	2	3	4	4	2	0	1	4	3	1	2	3	0	0	0	0	0	0	0	0	0	0					
filed	2	2	0	6	5	10	7	7	2	9	4	4	9	0	4	5	7	2	3	5	4	5	3	3	11	5	4	4	7	4	3	1	2	4	5	1	2	3	0	0	1	3	0	1	3	0	1	3	0	1				
terminated	1	2	1	5	10	9	6	0	2	5	10	4	7	7	7	4	2	2	3	7	5	3	3	2	11	0	2	4	6	5	3	1	1	4	5	1	2	3	0	0	1	3	0	1	3	0	1	3	0	1				
won	0	2	1	4	0	3	3	2	2	5	9	2	4	7	5	2	3	2	1	4	6	3	3	2	6	0	3	2	3	4	3	0	1	3	4	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0				
lost	1	0	0	1	4	6	3	1	0	2	1	2	3	(-)	2	5	1	0	1	1	1	2	0	0	3	0	0	2	1	1	0	0	0	1	1	1	1	1	3	0	1	3	0	1	3	0	1	3	0	1				
pending end of year	2	2	2	0	3	4	5	4	4	0	2	2	4	5	2	0	3	3	4	4	3	3	3	12	6	2	3	4	4	2	0	1	4	5	1	2	3	0	0	0	0	0	0	0	0	0	0	0	0					
STATE INVESTIGATIONS																																																						
first 24 months of year	--	--	--	--	--	--	--	--	--	--	--	--	--	203	225	221	211	222	225	240	293	302	215	402 ⁴	481	566	660	601	500	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--		
terminated during year	--	--	--	--	--	--	--	--	--	--	--	--	--	100	106	140	130	101	100	143	130	104	126	253	326	376	432	406	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	
disposed at during year	--	--	--	--	--	--	--	--	--	--	--	--	--	106	190	190	127	130	103	130	130	111	126	170	174	233	265	422 ³	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
cases	--	--	--	--	--	--	--	--	--	--	--	--	--	71	31	31	22	36	36	30	30	24	30 ²	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	
convictions	--	--	--	--	--	--	--	--	--	--	--	--	--	(-)	(-)	(-)	4	4	3	4	2	2	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--		
terminated	--	--	--	--	--	--	--	--	--	--	--	--	--	127	130	130	100	00	164	06	00	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	
pending end of year	--	--	--	--	--	--	--	--	--	--	--	--	--	225	220	211	222	225	200	293	302	215	401	500	600	601	500	267	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

FOOTNOTES:

1/ Up to 1971, this category was designated "Disposed on Government's Motion."

2/ Includes 6 cases not previously reported.

3/ 10 investigations closed out resulted in 64 cases, civil and criminal.

4/ Adjusted to include mergers.

5/ 34 investigations closed out resulted in 32 cases, civil and criminal.

(-) No cases reported.

-- Category not reported.

TABLE 5-20: Status of Antitrust Cases by Type of Proceeding for Fiscal Years 1959-1976,
Antitrust Division, U. S. Department of Justice.

STATUS OF ANTITRUST CASES BY PROCEEDING	YEAR																				
	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	7/1/76 to 9/30/76	1977	1978
ANTITRUST CASES																					
Filed	63	86	62	73	62	64	43	44	53	50	53	59	64	87	62	67	72	65	6	71	58
Appealed	7	8	3	17	10	4	8	10	5	4	5	5	7	7	2	5	6	10	0	16	18
Terminated	66	45	66	30	88	65	52 ^{4/} (55)	55	61	78	47	60	54 ^{4/} (57)	56	71	66	43	75	20	75	82 ^{6/}
Pending	100	141	137	180	154	153	144	133	125	97	103	102	112	143	134	135	166	154	140	146	122
CONSUMER AFFAIRS PROCEEDINGS ^{1/}																					
Pending Beginning of Year	--	--	--	--	--	--	--	--	--	--	--	--	--	395	726	1113	1032	894	930	831	638
Instituted	--	--	--	--	--	--	--	--	--	--	--	--	--	856	1265	690	684	387	113	776	624
Terminated	--	--	--	--	--	--	--	--	--	--	--	--	--	525	878	771	822	351	232	969	750
Pending End of Year	--	--	--	--	--	--	--	--	--	--	--	--	--	726	1113	1032	894	930	831	638	512
INVESTIGATIONS																					
Pending Beginning of year	--	--	--	--	--	--	508	567	590	644	692	710	678	758	773	776	715	701	652	616	541
Instituted	124	253	249	336	376	432	486	449	444	446	555	516	562	437	455	335	355	343	92	330	310
Terminated	126	179	164	442	355	405	427	426	390	378	537	548	482	422	452	396	399	392	128	405	372
Pending End of Year ^{2/}	313	491	566	460	481	508	567	590	644	692	710	678	758	773	776	715	701	752	616	541	479
ADMINISTRATIVE LAW CASES																					
Instituted	65	76	89	195	156	132	114	236	208	342	195	208	192	211	257	293	355	431	121	646	364
Terminated	65	68	73	102	178	108	107	183	236	378	201	231	185	185	257	240	283	314	86	555	512
Pending	32	40	56	176	154	178	185	238	220	184	178	155	162	229	229	282	354	501	536	627	479
MISCELLANEOUS PROCEEDINGS ^{3/}																					
	(-)	(-)	171	335	309	295	285 ^{3/}	248	277	242	371	409	515 ^{3/}	508	827	851	1073	867	193	1429	1629 ^{2/}

FOOTNOTES:

^{1/} Category not included in Summary Reports until 1972.

^{2/} Up to 1965, this category was designated "Pending."

^{3/} Up to 1972, this category was designated "Agency Proceedings."

^{4/} Figure in parenthesis includes cases where decree signed by one or more but not all defendants and cases settled but not terminated due to 30 day waiting period.

^{5/} Agency proceedings include intervention in merger proceedings, surplus property clearance, statutory advice to financial regulatory agencies in merger cases, reports to defense agencies, alien property matters, FTC Civil Penalty Cases, reports to CAB and appearance in other agency proceedings.

^{6/} There were 13 additional cases where a decree was signed by one or more but not all defendants. Judgments lodged with court awaiting compliance with Antitrust Procedures and Penalties Act.

^{7/} Miscellaneous proceedings include surplus property clearance, participation in merger proceedings, reports to defense agencies, reports to NRC on nuclear power plant licensing, FTC litigation, reports to CAB and appearances in other agency, interagency and intergovernmental proceedings. Figures adjusted to include Congressional Requests and appearances beginning Fiscal Year 1973; Merger proceedings Fiscal Year 1975.

TABLE 5.21: Comparison of Filings Among Types of Antitrust Cases Filed for Fiscal Years 1959-1978,
Antitrust Division, U. S. Department of Justice.

TYPE OF ANTITRUST	YEAR																				
	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	7/1/76 to 9/30/76	1977	1978
CASES FILED																					
Civil	21	59	40	41	39	41	33	32	36	40	39	54	52	72	42	33	37	45	4	34	27
Criminal	42	27	22	32	23	23	10	12	17	10	14	5	12	15	20	34	35	20	2	37	31
TOTAL	63	86	62	73	62	64	43	44	53	50	53	59	64	87	62	67	72	65	6	71	58
CASE FILED INVOLVING PRICE-FIXING																					
Civil	9	36	11	27	13	16	13	14	26	9	10	15	14	31	19	10	29	18	0	19	20
Criminal	40	23	18	31	20	11	7	12	16	10	13	4	9	14	19	21	29	16	1	34	27
TOTAL	49	59	29	58	33	27	20	26	42	19	23	19	23	45	38	31	58	34	1	53	47
MERGER CASES FILED	6	13	15	10	14	10	17	14	7	20	26	15	24	29	16	13	3	7	1	4	7
Bank Merger Cases	--	--	--	--	--	--	--	4	1	7	12	5	8	9	3	6	0	1	0	1	0
MONOPOLIZATION CASES FILED																					
Civil	3	7	4	9	4	5	6	5	6	3	3	11	15	13	5	6	3	5	1	2	0
Criminal	4	2	2	10	1	1	1	0	0	1	2	0	2	1	1	3	1	2	0	1	0
TOTAL	7	9	6	19	5	6	7	5	6	4	5	11	17	14	6	9	4	7	1	3	0
INDIVIDUALS INDICTED	61	66	18	129	61	67	41	43	70	48	28	14	34	24	42	84	82	101	4	88	103
ANTITRUST RELATED CASES	--	--	--	--	--	--	--	--	--	--	--	--	2	3	0	8	5	17	2	5	4

given year (the matter of case flow will be treated separately below). The carry-over depends upon the rate of terminations both for instituted cases and cases pending at the beginning of a year. Clearly agencies will vary considerably in the length of time they allow cases to remain in process. Merging caseloads, therefore, will be relatively less informative than will a consideration of entering cohorts of cases and their disposition. One thing that is apparent for antitrust cases is that there are more investigations carried over from previous years than are initiated in any given year--an indication of the length of time it takes to move a matter from the stage of investigation to one where it is either treated as a matter for an administrative, civil, or criminal proceeding, or when it is dropped altogether.

Some indication of the difficulties encountered in merging information on the early stages of a law enforcement process can be gained by considering how one would merge the above tabular information on antitrust investigations with that reported in Chapter III on FDA initiation of actions by inspection and complaint, or the information provided earlier on SEC investigations and their sources. Short of some standardization of what constitutes initiating actions,, such as complaints or inspections or what constitutes a particular form of inquiry, such as an investigation, there seems little reason to merge information for the earlier stages of a law enforcement process. Correspondingly, we would note that most agencies have at least a minimum of information for these early stages of the process. The more any inquiry is the object of agency processing, however, the more detail one acquires on the events in question as well as about their processing.

One of the surprising organizational realities about the processing of law violations in the United States is the relative ratio of civil to criminal matters in the federal courts. The U.S. Attorneys receive more than twice as many criminal as civil matters in a given year. In 1978, for example, there were 152,101 criminal as compared with 73,380 civil matters received in the 94 U.S. Attorneys' offices (USDJ, 1979:Table 12). The ratio of filings to matters received is much higher for civil than criminal matters, however, so that there were 50,097 civil cases (excluding land acquisition cases) filed by U.S. Attorneys in District and Appellate Courts in 1978 as compared with 35,023 criminal case filings (USDJ, 1979:Table 11). It is apparent then that were one to treat only matters that are litigated or adjudicated in U.S. Courts, a substantial proportion of all such matters would be criminal. The white-collar violations included in these federal prosecution and court cases, then, are far more likely to be criminal than civil matters. Though data are lacking for any precise estimate, it is apparent, nonetheless, that most violations of law are

never litigated or adjudicated. Rather, most matters are processed by some form of administrative disposition--either under administrative law standards and practice or by administrative discretion. Perhaps the vast majority of white-collar law violations are adjudicated by administrative law and procedures, though that is a matter that would require more careful inquiry.

Merging Information for Comparable Violations Charged. The problems of merging diverse legal categories of violation into more general categories apply to compliance as well as to law-enforcement systems. There are initially enormous problems in developing schemes to classify and to compare violations of law that derive from quite different kinds of statutory authority--civil, administrative, and criminal. Given the relative uniformity in the federal criminal code and the possibility of classifying offenses in terms of their status in the criminal code and the accompanying penalty statutes, there are far greater possibilities for merging information on criminal violations of law than for civil or administrative violations.

Administrative law violations present the greatest difficulty, since they are defined by the rules of a particular agency--rules that were adopted as part of the Federal Code of Regulation (FCR). Although rule-making powers are constrained by administrative, statutory, and case law, the great diversity among rule violations makes it difficult to merge information about them, except at quite general levels of abstraction (the most general case being that of administration "violation"). One can imagine how difficult it is to compare the violation of an FDA rule about testing procedures to be followed in applying for the right to market a given drug with a Federal Elections Commission (FEC) rule about report preparation except in terms of generic properties of these rules as, for example, that they are both rules about filing matters with respect to the status of information, both are procedural rules, etc.

There are two ways that the problems of comparing types of violations reported by different agencies may be resolved. One is to rely upon the major legal violation categories, i.e., upon classes of matters defined at law. This, as already noted, is a simpler problem for criminal violations of law than for violations of public or private law. Where one chooses to depart from the standard legal definitions of violations, as we have in our proposed definition, the problem of comparing types of violations across agencies may be intractable. A second way to resolve the matter is to treat violations of law in terms of their generic properties without regard for their legal status, i.e., to ignore all but the fact that some property or properties of illegality will be considered and not others.

One can choose, for instance, to focus solely upon the legality of the ends, ignoring the legality of the means or one can treat both as problematic. It is most problematic to treat the means--the illegal actions--as elements in the classification. Later we consider some possible classifications based on utilizing information available in legal classifications of violation.

Merging Information for Comparable Sanctions or Penalties. Inasmuch as law enforcement systems by definition are those where penalties can be assessed for violations of law, a third major possibility for merging information on white-collar violations of law derived from law enforcement systems is in terms of potential or actual sanctions.

We begin by noting that it is doubtful at this point whether one can calculate any meaningful rate of sanction for white-collar violations of law. This is so for a number of reasons, some of which are apparent from our previous discussions.

Firstly, there is considerable variation among agencies in the discretion used to sanction behavior. The contribution that any agency, therefore, makes to a given rate can vary considerably over time because of changes in matters affecting the exercise of discretion. Discretionary conduct makes the calculation of sanction-specific rates even more problematic. The calculation of a rate of fines for all white-collar violations, for example, may be difficult to interpret because some agencies have no power to assess fines, others rarely use their power to assess them (indeed, the exercise of that power is tied to only some and not other violations of law) and, finally, some agencies rely almost exclusively upon fines and are most likely to affect the overall rate (unless their volume is small).

Secondly, agencies vary considerably in the size of their population of violation events. Some agencies, such as the Antitrust Division of the U.S. Department of Justice or FTC, have relatively few violations while others, such as IRS or FDA, have far more. Even within an agency like the Antitrust Division, one kind of case may be dominant in numbers--such as Consumer Protection cases--even though they occupy only a small portion of the activity of the agency. Cases which are more easily and quickly prosecuted would also predominate. Above all, the problem of counting sanctions is part and parcel of what is to be included as violations to which sanctions apply.

Thirdly, while one can recognize degrees of severity within any sanction, e.g., amount of fines, it should be readily apparent that since agencies differ considerably

both with regard to the legal authority to level sanctions, which vary in their severity, and the discretionary authority to set the severity of sanctions, any rate of severity of sanctions may simply reflect differences among agencies in their sanctioning options, i.e., agency "x" accounts for most of the severe sanctions and agency "y" those of the least severe.

Fourthly, agencies vary considerably in what they select as a population base to which their violation or other rates apply and the size of that base is itself subject to discretionary counting. When merging information from diverse bases, the counts may not be comparable, a matter we shall turn to later. Here we would note that there is apt to be much greater variability for sanctioning rates using bases for early stages of law enforcement rather than for the later phases of adjudication. There is more comparability thus for cases filed by U.S. Attorneys than for complaints received by agencies. Hence a sanctioning rate for complaints would be far more subject to the elasticity of decision making than would the sanctioning rate for case filings.

Serious problems can exist even for trial court data when there is no uniform court system. Attempts to merge civil and criminal court counts for our state courts encounter serious problems of definition and counting because of variability among the states and their jurisdictions. The National Center for State Courts reports, for example, that under the definition of "civil" case, one state may refer to "civil judgments," another to "civil complaints" and yet another classify a comparable case as a "money judgment." Among criminal cases, there likewise is considerable variability, with one jurisdiction reporting cases as "informations filed," another as "indictments by grand jury," and still another as "criminal complaints" (National Center for State Courts, 1979:50).

Fifthly, agencies vary considerably in the way any sanction relates to other sanctions among its options and in the total number of sanctioning options available. Generally speaking, the more sanctions or penalties available, the less likely one is to use any particular penalty to the exclusion of all others. Likewise, the more different penalties available--particularly if they are highly differentiated in their severity--the more likely some particular penalty will be selected as a means to dispose of matters. Other things being equal, the more a penalty approaches but does not reach de minimus non curat lex, the more likely it may be used (though not necessarily because it is an effective deterrent or the optimal policy).

Finally, we would note that there is considerable variation over time in the kinds of penalties available to any sanctioning authority and in policies regarding their use. For that reason alone it may be quite treacherous to merge penalty information for a time series unless it is disaggregated by agency source so as to detect extraneous agency sources of variation. Above we illustrated how the FTC has been adding and discontinuing penalties over time--a source of considerable variability in explaining temporal variation in FTC penalty rates.

The foregoing is not to suggest that one may not usefully report the kinds of penalties given for violations of law by merging information for agencies, provided the penalties are germane and available to each of the sources in their administration of law enforcement and adjudication and, also, that the penalties are equally appropriate for matters under investigation. But those conditions are not usually satisfied. Clinard and his collaborators, for example, report the use of criminal, civil, and administrative penalties for different types of violations by their sample of corporations (1979:Table 18). They conclude that there is a strong relationship between violation type and level of sanction, and that violations affecting the economy, particularly Trade violations, were most likely to receive criminal sanctions (1979:134). What they do not seem to take into account, however, is that sanctions are related to types of violations. At law, few violations of the environment, for example, are open to criminal sanctioning, since the law for the most part provides little opportunity to refer environmental matters on criminal charges. One risks spurious inference in these cases because of the way that the law provides opportunities for penalizing violations and the way the social organization of events provides opportunities for them to occur. While it is risky, it can be attempted, then, to merge information on sanctioning rates for different agencies, provided that one can resolve problems of comparable units and of a standard population to which the rate applies. (The matter of classifying penalties and the calculation of rates are taken up at a later point in this chapter.)

There are a number of elements in sanctioning systems and their administration that create additional problems for merging or utilizing current agency information on sanctions.

Selection of Appropriate Bases for Sanctioning Rates. There is first of all the problem that arises in our calculation of rates--the problem of how to count sanctions in relation to properties of events and their participants. We have noted repeatedly that there is no simple relationship among victims, offenders, and events. The

problem is further complicated when one adds consequences of such events, including any official actions taken by way of sanctioning or penalizing offenders.

Clearly, most penalties are not equally applicable to persons and organizations as offenders. Yet a striking fact is that no current information system separates carefully individual from organizational offenders in reporting information on sanctions. Although an individual may be both fined and incarcerated, an organization cannot be incarcerated. Both individuals and organizations, nonetheless, can be under court order to cease functioning. Thus, it is not out of the question to treat the court order to cease functioning and incarceration as forms of incapacitation and treat them as incapacitation effects. Yet, all in all, apart from the most abstract of categorizations, penalties are not equally applicable to persons and organizations, nor are the discretionary decisions to apply them generally regarded as the same in both cases.

Just how difficult it may be to classify and count sanctions in relation to properties of events and their participants may be illustrated by a consent agreement that was filed in 1979 by the U.S. Department of Justice to terminate a civil antitrust suit against nine cigarette distributors and a trade association of cigarette distributors in New Jersey. The defendants in that litigation were as follows:

- Tobacco Distributors' Association of N.J. of East Orange;
- Consolidated Service Distributors, Inc., of Hawthorne;
- Eisler & Company, Inc., of West Orange;
- Glikin Brothers of Newark;
- J. Costagliola, Inc., of Paterson;
- J. Minkin Tobacco & Candy Co. of Passaic;
- Jersey City Tobacco Company of Jersey City;
- Paterson Tobacco & Confectionery Co. of Paterson;
- Pine Lesser & Sons, Inc., of Clifton; and
- William Schoenberg, Inc., of Linden.

In the civil suit brought by the Department on April 2, 1979, these defendants were charged with having agreed with their co-conspirators to raise and fix the price of cigarettes sold to retailers in New Jersey from at least 1969 through August, 1977. On the same date a criminal indictment also came down charging the same defendants and Metropolitan Tobacco, Inc. with a criminal violation of the Sherman Act. The civil complaint did not name Metropolitan, which was a defendant in a separate Antitrust Division civil action in New York (which was settled by consent decree on April 18, 1979).

There were both civil and criminal sanctions in these separate actions. In the criminal violation of the Sherman Act, the defendants pleaded no contest to the criminal charges and their fines collectively amounted to \$240,000 (no information was supplied by the U.S. Department of Justice on the fines for each defendant). Apart from the consent decree that resolved the civil action against Metropolitan, the consent agreement entered into with the 10 above named defendants included the following sanctions: first, each defendant was enjoined for 10 years from entering into an agreement with any distributor or subjobber to fix the prices at which cigarettes are sold to retailers in New Jersey or to communicate price information to them; second, the Tobacco Distributors' Association of New Jersey was prohibited from receiving or collecting any information on prices of cigarettes except at the request of the Division of Taxation or the Treasury Department of the State of New Jersey.

Setting aside the most difficult of all the questions--whether this behavior could be counted in any sense as an event or series of events, it is clear that there are numerous defendants and actions involved and that there are multiple sanctions--both civil and criminal--for the same kind of behavior (conspiracy?). Unreported perhaps is the matter of how many indictments were handed down in the criminal action and whether there originally were other charges as well. Just how one would count these sanctions and enter them into a merged classification is far from readily apparent to us. What is apparent, however, is that one cannot relate sanctions in any simple way to events. The foregoing example makes clear that the original civil actions and indictments were based on a large number of events of price-fixing that stretched over a period from 1969 to 1977. There appears to have been no way to determine just how many such "events" there were to be counted, a problem encountered quite frequently when repeated victimization of the same victims by the same offenders is detected. Treating these events, however, as a single event--a single conspiracy--poses problems, since the sanctions may relate more closely to the duration of price-fixing behavior in the sense of a continuation of

conspiracies rather than to a single conspiracy stretching over a long period of time. The example makes clear that both civil actions and criminal indictments are possible in such cases and that their number depends upon whether one charges both individuals and organizations (or some combination of individual and organizational units) and the number of actions or indictments. These in turn may affect for what one is sanctioned and thus the total number and kind of sanctions. At some point, in fact, the number of sanctions is caused to some degree by prior decisions about counting events, offenders, actions and indictments. It is also the case that since sanctions must be related to these units, at some point the decisions about sanctions will determine the number of these units that are germane or survive the process of sanctioning itself. The more open decisions about sanctioning are to discretionary decision making or to processes of negotiation and agreement, the more the "outcome bargain" determines the base to which the sanctions apply. At some level of causal explanation, it is quite reasonable to assume then that while the level of administrative response to behavior determines the number and kind of sanctions, the number and kind of sanctions also affects administrative response. This causal simultaneity is not easily disentangled.

Variability in Sanctions Among Agencies. The way that sanctions are determined in white-collar violations of law varies considerably among agencies. The availability and choice of sanctions are affected to some unknown degree by the nature of the evidence available to prove violation and the nature of the system of proof. Rules of evidence and inference and procedures differ among administrative, civil, and criminal law systems. Merging information on sanctions from these different legal domains thus may be quite misleading. The assessment in a fine may be quite different of a negotiated process of an administrative law system than a civil one or either of the former as contrasted with a criminal law sanctioning system.

There are ways, moreover, that the systems of proof and findings of violation differ for ordinary as compared with white-collar violations of law. The way that these systems affect sanctioning behavior is not clearly understood. A few examples may illustrate the point. Each of the major systems provides for "admission" of violation of law and for different ways to admit violation. These different forms of "admission" have powerful effects on sanctions. They vary in the degree to which either party to the contest of proof has control over the form of admission. A consent agreement, a forfeiture, a plea of nolo contendere, and a plea of guilty are all forms of "admission," but they provide vastly different opportunities for sanctioning. We know relatively little about how such "choices" are made and their consequences for sanctioning. It is commonly

contended, for instance, that persons charged with white-collar violations of criminal laws are more likely to enter pleas of "nolo contendere" than are persons charged with ordinary crimes, but definite evidence generally is lacking, and the rates of "nolo" among all pleadings typically are very low. We know, however, that the choice of a "nolo" may be quite different for a violator in a white-collar than an ordinary criminal proceeding since pleas of "nolo contendere" in criminal cases have a very different status in any pending civil litigation than do pleas of guilty or findings of guilty. Pleas or findings of guilty under some circumstances have a considerable effect on damage settlements in civil actions, since a nolo plea is not admissible in a civil suit. One implication is that to interpret the selection of forms of admissions to sanctions one would need to relate information on parallel civil and criminal proceedings with respect to the same matters. Such information is lacking in any official statistical information system, but in some cases one can secure information from a number of sources to construct a profile.

An illustration is provided through examining the sanctions leveled against major paper products industries for price-fixing. Briggs (1979:33-36) gathered information on administrative, civil, and criminal actions, determinations, and fines for some 21 major forest products corporations in price-fixing cases for several types of paper products. Setting aside the question of whether the information in the table sheds light on the proposition that price-fixing is most likely to occur in forest product areas where profit margins are narrow, the table discloses a substantial amount of price-fixing actions against these 21 organizations and an aggregate amount of fines from civil and criminal actions of roughly a half billion dollars. What is especially noteworthy is that all but one of the 21 named corporations and 48 corporation executives indicted in connection with the price-fixing allegations pleaded "nolo contendere" to the charges in criminal cases. These pleas are so closely associated with negotiated settlement in civil and civil class action cases that it is impossible to disentangle any aggregate relationship among them, but it suggests that at least in selected kinds of cases, e.g., price-fixing cases, pleas of nolo contendere not only are common but that they may be linked to civil settlements. Given legal limits on the amount of fines that can be set in most criminal cases, it is not surprising that the size of fines is far less in the criminal actions than in the negotiated civil or civil class actions.

Just how complete the information is for FTC administrative actions or for civil and criminal proceedings against these corporations in price-fixing matters cannot be ascertained from this report. But what is apparent from inspection of Table 5.22 is that it is possible to

TABLE 5.22: TYPE OF ADMINISTRATIVE, CIVIL, AND CRIMINAL ACTIONS, DETERMINATIONS, AND FINES FOR PRICE-FIXING IN SELECTED FOREST PRODUCTS INDUSTRIES BY MAJOR FOREST PRODUCTS CORPORATIONS, 1976-1979.

[illegible]

SOURCE: Forbes Magazine, June 25, 1979, pp. 34-35.

determine--within unknown limits--the use of administrative, civil, and criminal pleadings, determinations, and sanctions for a selected set of white-collar violations of law, such as price-fixing cases in a given industrial sector. Clinard and his co-workers (1979) similarly demonstrate that such data can be assembled for corporations, though they do not present as detailed information on the contribution of pleadings and penalties for different domains (administrative, civil, and criminal) for the same cases in the same industry sector.

The institution of penalties, however, in no way assures they will be carried out. Agencies that assess penalties generally either lack authority to implement them or they fail to systematically collect and report information on the extent to which sanctions of first instance are actually carried out. The way that a sanction can be executed likewise affects the extent to which it will be accomplished. Fines provide an example of how the law may impede their collection. Present federal law (18 U.S.C. 3565) provides that criminal fine judgments "may be enforced by execution against the property of the defendant in like manner as judgments in civil cases." This means that when fines are not voluntarily paid, the U.S. must sue as an ordinary creditor under state law. The cumbersome nature of these civil suit procedures means that the federal government generally does not collect fines from uncooperative violators.

One expects then that the law as well as its administration will affect the extent to which sanctions are implemented and that implementation will vary both by types of sanctions and the violations to which they apply. One might assume, for example, that sentences to incapacitate persons are more likely to be suspended than executed, but that a decision to incapacitate the person ordinarily will be carried out. Quite the opposite may be the case for a penalty such as fines. Fines are perhaps less likely to be suspended once set (though they may be subject to reductions in their original amount) but once set, their collection often is not instituted or assured.

A recent GAO report (December, 1979) concluded that the U.S. Department of Justice often failed to file civil suits to recover dollars owed as taxes and that it did a "poor job" of collecting civil penalties when they are assessed. The report noted that even when a money settlement is obtained it is regularly collected for only a minority of all settlements. It was reported, for example, that in one sample of 194 actions for fraud, 46 percent of the persons or organizations fined had paid nothing on their fraud settlements, 27 percent had made no payment in six months and only 27 percent were making regular payments. These data have a disadvantage from our perspective in that many

ordinary crime fraud cases are included among all fraud cases so that it is not possible to tell the extent to which white-collar as compared with ordinary violations of law result in a failure to comply with the sanction imposed.

The absence of regularly collected information on whether sanctions imposed are carried out poses problems for testing theories about deterrence or about other effects of sanctions. Put in another way, information on sanctioning white-collar violations of law generally has face validity only as a statement of an action taken or ordered by a sanctioning agent and not as a measure of what sanctioning actually takes place. What is needed are careful inquiries of the extent to which sanctioning actions actually take place and an accounting of what intervenes to preclude their execution. One would expect, of course, that there are legal actions reversing or reducing sanctions as well as their deliberate evasion. One would also assume that agencies may have more information on the actual execution of sanctions than they are prepared to report regularly--owing in part to the fact that information on the imposition of sanctions ordinarily presents a profile of the organization as more enforcement-oriented than does information on their actual execution.

The lack of standardization of penalties that are common to administrative, civil, and criminal enforcement is understandable, given differences in criteria of proof and the consequences of sanctions. Yet what little evidence has been offered so far suggests that the severity of the sanction permitted and actually given is not related that closely to matters of proof.

Even within a domain of law such as the criminal law, there is a lack of uniformity for determining what sanctions are permissible and their minimum or maximum severity, whether in the form of sentences, fines, or kinds of settlement. Comparing the civil and criminal penalties for roughly similar violations in two different agencies, the MSHA and the CPSC, may illustrate how much sanctions may vary in these respects.

The MSHA Act provides that the operator of a mine who violates a mandatory standard can be assessed a civil penalty up to \$10,000 for each violation and that each violation may be considered a separate offense. An operator who does not correct a violation within the allowable period may receive a civil penalty up to \$1,000 a day for each day the violation continues. Willful violations of a mandatory standard upon conviction can bring a fine of up to \$25,000 or imprisonment for up to a year or both. With a prior conviction, willful violations can bring a fine up to \$50,000 or imprisonment for up to five years, or both.

The CPSC Act provides a somewhat different fine structure. Persons who knowingly violate Section 19 of the Act are subject to a lesser civil penalty, one not to exceed \$2,000 for each violation, though each violation also may be considered a separate offense. Unlike MSHA, separate violations cannot exceed a maximum fine of \$500,000 for any related series of violations. Criminal penalties similarly are different. Willful violations of a mandatory provision of Section 19 of the CPSC Act provides for a greater maximum fine--up to \$50,000 but for a similar prison term, up to one year, although there is no provision for a longer term when there is a prior conviction. By way of additional comparison, the provisions of the Atomic Energy Act enforced by NRC seem less severe for related series of violations. The Act provides that when penalties accrue, the maximum civil penalty for any person who commits a violation for which a license may be revoked may not exceed \$5,000 for each violation nor more than \$25,000 for all violations occurring within any period of 30 consecutive days.

Long (1979) similarly notes that civil penalties are often much more severe than are criminal ones for violation of the same provisions of the Internal Revenue Code. She attributes this to three sources of variation. One is that most civil penalties are ad valorem (i.e., according to its value), the amount of the penalty being directly proportional to the amount of tax underpayment, while that is not true for criminal penalties, where a maximum is set under the criminal statute. A second reason is that a civil penalty is computed on a base of total underpayment, regardless of whether the underpayment was due to willful conduct. And third, while the criminal courts may use discretion in assessing a penalty up to the maximum amount, civil penalties are set by statute and the rate is typically not subject to discretionary reduction.

There is then, considerable statutory determination of penalties so that civil penalties generally provide a higher level of severity in the administration of sanctions than does the criminal law.

This lack of uniformity of standards in both civil and criminal penalties is not easily resolved, given the history of legislation and the diversity of civil and criminal statutory law. A uniform structure of penalties may be resolved more readily for criminal than civil code violations, given the relatively greater standardization of violations in the criminal code. Attempts are being made in the proposed revision of the U.S. Criminal Code to achieve greater uniformity and to recognize the distinction between organizations and individuals as different objects for sanctioning violations. In testimony before the Committee on the Judiciary of the House of Representatives concerning the proposed reform of the U.S. Criminal Code, Deputy

Attorney General Heymann made a plea for distinguishing organizations from individuals when sanctioning behavior, particularly in setting maximum penalties for fines (1979:23-24):

"The Subcommittee draft would generally raise fine levels--but in our view by not nearly enough. Moreover, it fails to make an important distinction, adopted recently by Congress in the Foreign Corrupt Practices Act and by the Senate in last year's code bill, between the maximum fines provided for an organization and an individual. Under the Subcommittee draft, the maximum authorized fine for a felony is \$100,000 and for a misdemeanor is \$10,000. Where the defendant is found guilty of an offense through which he derived pecuniary gain, a fine in an amount equal to the gain may be imposed. Even for individuals, we recommend considerably higher maximum fine levels--\$250,000 for felonies and \$25,000 for misdemeanors. We believe that organizations present different considerations, not only because the larger entities generally have assets and income far in excess of most individuals so that higher fine levels may be necessary for effective deterrence, but also and more fundamentally because organizations, unlike individuals, cannot be sent to prison. Thus, whereas fines may be an additional form of sanction for individuals, which can be combined with a sentence of imprisonment, fines are essentially the sole punitive and deterrent sanction available for organizations. The Foreign Corrupt Practices Act, and the recent amendments to the antitrust laws, provide up to a \$1,000,000 fine for a felony violation by an organization. We recommend this as a reasonable maximum level for organizational felonies generally while suggesting \$100,000 as a maximum fine for organizations convicted of misdemeanors. We also propose, as an additional deterrent to the commission of regulatory and other misdemeanors that imperil life, that a conviction for a misdemeanor resulting in death of a human being be treated as a felony for purposes of the applicable maximum fine levels."

Despite the uniformity that can be achieved by statutory codification or rule-making, unless the discretionary powers of adjudicators are constrained considerably, there will be considerable variability in the application of laws and rules to individual cases.

Deterrent Effect of Penalties. Very little is known about how penalizing behavior deters white-collar violations of law. This is true for our knowledge of both general and

specific deterrence. The absence of knowledge is owing to a number of reasons, some of which derive from problems in measuring sanctions and their effects.

First, much research on penalizing violators fails to separate the social status of the offender from the nature and consequences of his law violation. This is true for research on both persons and organizations as offenders. For persons, it is not known just how much weight sanctioning authorities give to the social status of the offending person in selecting a particular penalty and how much they are responding to the seriousness of the offense, the characteristics of the offender's behavior, and of its consequences for victims. For organizations, it similarly is not known how the social status of the organization--its reputation as an organization and the social standing of its members implicated in the organizational offense--is taken into account by controllers in apportioning sanctions. While the social status of offenders appears to be taken into account in all penalty decisions, regardless of the kind and nature of the offense, it is difficult to assign a quantitative value to its effect on decisions.

Second, we know very little about the ways organizations are punished and the consequences of punishments. We know that some sanctions are applicable only to organizations or only individuals, but for those applicable to both we do not know whether the efficacy of any given penalty is greater for individuals than for organizations. We shall be unable to disentangle the sources of such effects unless we can evolve a comparable standard of "severity" or "impact." The net effect of a given amount of a fine, for example, should be different for individuals than for organizations. Nor, do we know how penalties have general as well as specific deterrent effects for organizations. Moreover, where both individuals and organizations are penalized for their participation in a common offense, or for related offenses, we do not know whether the sanctioning of the individual violator depends upon the penalties meted out at the same time to the organizations (and vice versa). Nor do we know which sanctions--those imposed on the individual or those imposed on the organization--are the ones which are responsible for whatever effects are observed.

A third reason is that we know very little about how penalties relate to measures of recidivism since we lack appropriate measures of recidivism and penalties in a career. In particular, were one to compare different penalties allotted to offenders in comparable violations for their deterrent properties we would have to take into account the differences in detecting violations because any subsequent penalty depends very much upon capacities to detect violation. Where the risk of detection is low,

recidivism rates should be higher than where the risk of detection is high. It is quite possible that not only is it difficult to detect white-collar violations and build a case (Katz, 1979) but that detection alters considerably any possibilities for engaging in that conduct in the future. Simple properties that flow from public or private knowledge and alter opportunities are major sources of effect wherever position is used to commit violations. Hence, in white-collar violations, it may be that more detection of violation causes changes in position which are more critical than the nature of the penalties in causing specific deterrent effects.

Finally, we would note that it is difficult to link information on penalties to general deterrence.

Domains of Social Control and Their Consequences for Information

Formal legal systems regulate access to the law by separating legal content into organizational domains with different principles and procedures of organizational mobilization and different powers over the processing of matters. There are many administrative agency domains, for example, and our constitutional system creates federated jurisdictions. The consequences of separating legal content into different organizational domains is not well understood, but it seems apparent that in assessing the quantity, quality, and use of information on white-collar law violations, one needs to take into account the scope of the organizational domain to which an information system on law violations attends. In doing so, one determines the organizational boundaries that define the particular social transactions in the information system of an organization. Both the legal and the organizational mandates of any organization, as well as its operational procedures, will enter into the determination of these organizational boundaries.

There are a number of elements that fix the scope of an organization and its environment and affect the generation of information about white-collar law violations. We shall consider four of them: (1) the formal organization of gathering information; (2) the nature of the integration of an agency's tasks (whether horizontal or vertical); (3) the legal content and jurisdiction of its mandate; (4) the functional generality or specificity of an organization's enforcement objectives.

Formal Organization for Gathering Information. The gathering of information depends upon the ways an organization structures its operating units to carry out its mandates and upon how it allocates resources, including manpower, to acquire and process that information. A law

enforcement agency may simultaneously process both persons and their organizations as wards or clients of the agency and information about them, or it may process only information about them. Though interrelated, the units and information about them are also to a substantial degree processed independently one of another. Inasmuch as organizations cannot be processed in terms of a physical presence, they are processed entirely in terms of information about them or by processing their representatives as persons, whereas persons can be processed both as information and as objects that are physically present. The status of the record may in this sense be more critical in processing organizations than in processing people, though what is available as behavior in all cases is a matter of organizational record. For organizations, however, both the processing and the processed information derive from behavior that is a matter of record. Hence in legal proceedings the duces tecum or writ requiring a party to appear in court and produce some document or other evidence for the court to inspect or use is more critical in organizational than in person violations. Not only is the subpoena duces tecum more common in processing organizational than individual matters but there likewise appears to be greater reliance upon the subpoena ad testificandum since the Court seems to depend more upon compulsion to produce testimony in organizational than in individual matters. This may be because "confession" for organizations is more by way of record than by the testimony of its participants (who are protected against self-incrimination). The growing use of "immunity from prosecution" statutes testifies to the role that individual confession plays in prosecuting conspiracy (group activity) and organizational behavior.

The structuring of legal domains, moreover, into organizational domains such as public and private, judicial and executive, or civil and criminal courts implies different principles for the mobilization of law and the processing of matters in legal ways. Within the United States, for example, there are relatively few restrictions on bringing private as compared with criminal matters into a formal legal system since the State is the substitute plaintiff in all criminal matters. Yet it seems rather apparent that for white-collar law violations, we generally have more information accessible on public than on private matters. It is difficult to secure detailed information on cases that are litigated in civil courts, except for that information which is a matter of public record or which relates to the formal processing of cases and is gathered by agents of social control. In part, this is due to the fact that private matters for the most part are permitted to reside in private information systems when they are treated as private matters in civil proceedings. What is treated as

a private matter in a government information system is at least accessible as information to administrative control agencies for internal if not for public use.

The restrictions on rights of citizens to bring suits against their governments are likewise substantial at law. Formal litigation between citizens and their government often depends upon the consent of the governed to be a party to the suit--particularly where access is not a matter of right and where the government is charged with a violation of law. Ordinary citizens usually lack standing to sue their governments in most matters. There are also restrictions on actions that one government may bring against another or one agency against another. The constitutional separation of federal and State powers, for instance, restricts federal actions against states. For these and other reasons relating to constitutional, legislative, and organizational mandates restricting actions against governments as violators, one ordinarily will not acquire information on governments as violators.

Matrix of Organizational Identities of Offenders and Victims. Theoretically, private persons and organizations as well as Federal, State, and local governments can be cast in the role of either violators and victims. There are 25 different combinations of victim and alleged offender in this simple matrix. Of these, the most common cases in information systems are those of private persons as victim and as violator, the case of Government assumes the status of surrogate victim in criminal matters. Perhaps the least common victim-offender relationship in this matrix is that of federal government as victim and violator. The categories of government as victim and violator and of governments as violators against private persons are almost always absent in formal information systems because the information is not classified in this way. Below we report on a number of cases from newspaper information systems to illustrate the nature of such actions against governments as offending parties and as victims, other than as surrogate victims.

- (1) Federal Government Offender-Private Victim: Tektronix, Inc. was awarded about 4.5 million from the U.S. Government in 1979 in satisfaction of a patent infringement judgment obtained against the U.S. The suit was filed by the company in 1961 and decided in April, 1978. (The Wall Street Journal, Jan. 3, 1979, p. 15).
- (2) Federal Government Offender-Public Victim: The Environmental Defense and several other parties sued the U.S. Army Corps of Engineers because the U.S. Army decided in 1967 to increase the size of the Tombigbee Waterway without authorization by

Congress. In 1979, the U.S. Appeals Court for the 5th Judicial Circuit ruled that while the Corps of Engineers had expanded the project beyond that authorized by Congress, the challenge should have been filed earlier: "the day for battle on the authorization issue had come and gone and the question should now be laid to rest unheard." (The Washington Post, March 20, 1979, p. B3).

- (3) Federal Government as Offender and Victim: The U.S. Army charged that recruiting offices had inflated test scores and fostered cheating on ability level tests for army recruits (The Washington Post, March 7, 1980). The GAO disclosed that the GSA mismanaged the purchase of furniture (The Washington Post, March 19, 1980, p. A14).
- (4) State Government as Offender-Federal Government as Victim: The Secretary of HEW charged the State of Illinois with improperly billing the federal government for some 12,600 abortions that were not eligible for Federal financing (The New York Times, November 23, 1978); A Federal appellate Court stopped the EPA from imposing \$300 million in fines against the State of Colorado for failure to develop an automobile emissions inspection plan (The New York Times, March 15, 1980); The federal government filed suit in the U.S. District Court of Manhattan charging New York States Court system with discrimination against women in the hiring and promoting of court clerks (The New York Times, December 27, 1978, p. B6); The Federal Government through HEW charged the Illinois Department of Health for improperly diverting nearly \$3 million in Federal funds intended for the state's health planning agency to other health programs (Chicago Sun-Times, January 3, 1979, p. 10).
- (5) State Government as Offender and Victim: The State Auditor of Public Accounts in Virginia charged the Virginia Supplemental Retirement System with failure to keep adequate public accounts. The lack of controls permitted the establishment of 29 known fraudulent pension accounts and the looting of at least 12 legitimate accounts. Three former employees of the pension agency and at least 12 others outside the agency were convicted of stealing more than \$110,000 from its funds (The Washington Post, November 30, 1978).

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- (6) State Government as Offender-Private Party as Victim: A rancher charged that a highly toxic pesticide--a known carcinogen--had been used to spray cattle by the California Food and Agricultural Department in a Federal-State scabies control program (San Francisco Examiner, December, 1978).
- (7) Local Government as Offender-Private Victims: The United States Attorney for Illinois and the Chicago Police Department investigated allegations that Chicago police matrons subjected women inmates to strip searches of body cavities that constituted battery (perhaps an ordinary crime in this instance since it is unclear as to the nature of the gain) (The New York Times, February 18, 1979).

These cases refer to governments as organizational offenders. A large number of cases of governmental corruption and "official misconduct" occur where representatives of government are offenders and it is unclear whether they are acting in purely private interests or in the interests of government organizations as well. A recent New York situation, for example, involved the resignation of a Deputy Commissioner of the Department of Health after he admitted he had improperly prescribed drugs for a department secretary that were intended for her supervisor. The deputy (the agency's number two official) alleged that he was "pressured" into prescribing the drugs by another deputy health commissioner who was the agency's number three deputy, and also recently resigned) (The New York Times, January 29, 1980, p. B3).

Even when there are documented instances of government violations on behalf of the government, it is no simple matter to determine the number of such violations. A case in point is the acknowledgement that FBI agents committed illegal acts and cover-ups on behalf of that agency during the Hoover directorship. Documentation of the extent of that activity is unclear so that no precise count is possible.

There is reason to conclude, then, that generally governments fail to develop their information gathering and reporting so as to provide information on the status of themselves as violators. Where the government is treated as an actual rather than as a surrogate victim (assuming the status of the State as an injured party in all criminal matters), much of the government's information is on offenses committed by private individuals and private organizations rather than by governments, their organizations, and their employees. It is hard to determine just how much of this failure of government information

systems to categorize government in these roles is due to the general inattention to reporting on organizations as victims and offenders and how much is due to the fact that the government does not intend to incriminate itself. What is apparent is that one could not develop any systematic accounting based on current information systems.

Jurisdiction. Although there are many ways that domains affect the gathering and reporting of information on white-collar law breaking, perhaps nowhere is the problem as acute as in the case of overlapping jurisdiction for the same offenses. We have noted previously that this affects achieving an accurate count of such matters. Furthermore, little is known about the way in which jurisdiction does and does not overlap. Where matters are left exclusively to State jurisdiction, our use of Federal information systems will bias our selection of indicators of white-collar law breaking. We would expect, for example, that the representation of cases involving real estate brokers would be highly selective in any federal as compared with state information system. We might find some instances of fraud involving programs of HUD, but violations of licensing and other State law requirements will generally be lacking in federal information systems--albeit Federal surveys may collect some indirect as well as direct measures of kinds of violation, such as housing code violations. Short of an inquiry comparing Federal, State, and local information systems on white-collar law breaking, we cannot determine how each of these domains define the universe of law breaking.

There are, in fact, ways that the bringing of matters involving governments intersects the question of jurisdiction, such that the same matters may involve different charges for different levels of government. A recent felony indictment of the U.S. District Court in Nashville, Tennessee, one of a number of actions brought in various states recently, provides a case in point. The federal government charged three Memphis corporations with conspiring to rig bids on two State of Tennessee road-building contracts. While the bid-rigging can be prosecuted by Tennessee on its own behalf, the Federal indictments are based on the legal domains of federal jurisdiction--violation of Section 1 of the Sherman Act, eight counts of mail fraud, and submission of false statements to the federal government on inquiry (Department of Justice Release, January 9, 1980). Thus the federal government is pursuing matters that ordinarily only states might be presumed to pursue purely as state interests.

The federal government is mobilized likewise to carry forward private interests against state and local governments. A recent case in point is the substantial award a federal court jury of Rhode Island made to a state

prison inmate who charged that a state policeman had applied a chemical to his torso that substantially increased his likelihood of bladder cancer (The New York Times, March 23, 1980, p. 24).

We have focused on a number of the consequences that the separation of legal content into organizational domains has on the availability and kind of information on white-collar law breaking. Some of these domains also create territorial operating units, each of which has legal jurisdiction over matters in its particular realm. Because of their autonomy, their discretionary enforcement in their jurisdiction, and the selective nature of violating laws, operating jurisdictions make different contributions to the variance in any aggregate statistic.

Among the U.S. Attorney's offices and U.S. District Courts, there is considerable variation in the kinds of matters that are handled within each jurisdiction. Violations of the MSHA act are more likely to be brought in jurisdictions in Kentucky, West Virginia and other mining areas than they are in essentially agricultural states. Similarly, organized crime, and trade and securities matters are more likely to be brought in major metropolitan than in less urban jurisdictions. Shapiro (1980:162) found that 30 percent of all SEC cases were brought in the New York region during the period 1948-72. Among the other nine SEC regional and home offices, only the Chicago and Seattle regions contributed as much as 10 percent of all SEC cases. What this suggests is that investigations of white-collar law violations based on the cases in a particular jurisdiction may not be representative of the universe of such cases for all jurisdictions. The Southern District of New York, for example, may be biased toward major kinds of white-collar violations of law in securities, antitrust, and violations involving large corporations whose national offices are located in that district, whereas the Chicago area may be biased toward commodity trading violations. Clearly, unless we understand the contribution that any organizational jurisdiction or operating unit makes to the total variance, inferences based on cases in particular offices and their processing may be misleading.

It is difficult to determine what accounts for this considerable variability in manpower and case "productivity," in part because U.S. Attorneys do not provide case load statistics separately for criminal and civil matters (operationally difficult and unreliable statistics to compile). One might also assume that the already mentioned presumptions about differences in kinds of matters brought--large corporate securities and antitrust cases in the Southern District of New York and mine violations in Kentucky and West Virginia--account for these differences. Yet it is clear that resources are not

allocated in the same way to the three districts. The Southern District of New York averaged 110.6 U.S. District Attorneys assigned during 1978 compared with a national average of 15.1 and 9.5 for Eastern Kentucky and 4.4 for West Virginia. Yet, in terms of cases filed, handled, and terminated in these offices, it is clear that the Southern District of New York is favored with far more manpower. We lack any way of determining whether certain kinds of violations, particularly white-collar law breaking, require more manpower than other kinds of violations and whether variations in these inputs account for differences in manpower allocation and caseloads among offices. There is reason to conclude that while the availability of manpower affects the amount of time an attorney can allocate to cases, given input to an office of matters and filings, the amount of time spent on cases will also affect the volume of manpower, particularly as the volume of cases pending grows. Still there probably is no simple simultaneous relationship between manpower and time spent in handling matters, as inspection of these statistics in Table 5.23 shows atypical cases.

There may be additional ways that organizations affect the collection of information arising from the decentralization of legal jurisdiction or discretionary decision making. An organization's resources often are not uniformly distributed or utilized in the same ways among a domain's offices. Constraints on resources in turn determine decisions about which violations an organization will attend to and how much attention any matter will be given.

To take into account how the organization of each jurisdiction affects the gathering and reporting of information on white-collar law breaking is a complex task since we lack agreement about the relevant units of comparison and the common metrics for making conceptual comparisons. Concepts for making organizational comparisons of the typical agency are "manpower" and "cases," with the common metric being "a caseload," i.e., the number of cases per some unit of manpower.

One is struck by the variability in even such crude statistics as caseloads, however, as inspection of Table 5.23 discloses. The table presents information on average number of cases handled and terminated per Assistant U.S. Attorney in each of the 94 offices. The Eastern District of Kentucky, for example, handled 508 cases per Assistant U.S. Attorney in 1978, as compared with a national average of 123 and with a low of 64 for the Southern District of New York. The U.S. Attorney's office of West Virginia reported terminating 204 cases per U.S. Attorney in 1978 compared with a national average of 56 and a low of 18 for the Southern District of New York.

TABLE 5.23

CASE LOAD PER ASSISTANT U. S. ATTORNEY BASED ON U. S. CASES IN DISTRICT AND STATE COURTS - FISCAL YEAR ENDED SEPTEMBER 30, 1978

JUDICIAL DISTRICT	AVERAGE NUMBER OF ASSISTANTS U.S. ATTORNEYS	U.S. CASES PENDING 10/1/77 2/ 2/	CASES FILED DURING YEAR 2/ 2/	U.S. CASES HANDLED DURING YEAR	CASES HANDLED PER ASSISTANT U.S. ATTORNEY	CASES FILED DURING YEAR 2/ 2/	CASES FILED PER ASSISTANT U.S. ATTORNEY	U.S. CASES PENDING 10/1/78 2/ 2/
ALABAMA N	13.9	783	1,135	1,078	136.2	1,140	82.5	808
ALABAMA S	6.5	150	455	411	63.1	382	58.7	229
ALABAMA W	3.9	100	298	280	71.8	260	66.8	235
ALASKA	7.4	326	616	542	73.5	500	70.0	350
ARIZONA	22.4	1,785	1,267	3,072	99.7	1,513	69.1	1,550
ARKANSAS E	9.6	559	829	1,140	123.7	681	62.6	547
ARKANSAS W	3.6	200	294	318	167.6	269	62.3	354
CALIF N	25.6	2,034	1,133	3,027	90.1	1,153	32.3	2,268
CALIF E	61.6	3,549	3,887	2,233	66.5	3,024	51.0	3,030
CALIF S	12.4	1,176	1,386	2,130	171.7	933	75.2	1,107
CALIF W	32.5	2,659	1,994	6,666	26.0	1,086	58.0	2,100
COLORADO	16.0	769	1,035	1,785	107.5	924	55.0	601
CONNECTICUT	11.4	931	999	1,532	169.3	904	79.3	1,026
DELAWARE	5.8	221	277	318	83.0	266	68.0	416
DIST OF COLUMBIA	68.8	2,680	2,387	5,025	64.5	2,000	29.0	2,050
FLORIDA N	5.2	310	657	775	155.7	325	65.8	400
FLORIDA S	23.4	1,545	1,990	3,511	172.1	1,701	88.3	1,778
FLORIDA W	29.6	2,640	2,895	6,049	157.7	1,919	60.7	2,600
GEORGIA N	19.1	1,339	1,121	2,067	126.0	1,314	64.8	1,100
GEORGIA S	8.9	267	1,029	1,656	212.4	1,056	101.7	262
GEORGIA W	7.1	206	296	426	134.7	513	72.2	414
HAWAII	6.1	508	266	266	176.1	166	65.3	318
IDaho	6.5	265	585	765	178.0	338	73.2	435
ILLINOIS N	22.1	3,283	1,677	5,483	78.4	2,013	36.2	2,002
ILLINOIS E	6.0	523	545	1,045	159.5	523	70.9	562
ILLINOIS S	5.1	276	462	613	131.9	293	57.4	349
INDIANA N	8.9	666	527	1,021	127.6	683	63.3	528
INDIANA S	6.7	723	1,006	1,717	171.7	731	99.0	763
IOWA NORTH	3.9	189	269	293	146.7	293	61.3	156
IOWA SOUTH	3.2	154	657	641	163.1	331	94.9	318
KANSAS	9.0	460	1,154	1,723	189.7	1,076	109.0	764
KENTUCKY E	4.5	3,076	1,156	6,026	540.8	1,156	121.6	3,000
KENTUCKY W	6.1	1,014	937	1,951	200.0	937	115.0	1,014
LOUISIANA E	17.4	688	1,000	1,000	100.0	903	50.2	665
LOUISIANA W	3.9	213	213	213	123.1	213	62.5	237
LOUISIANA S	18.3	1,032	704	1,256	162.9	703	72.1	513
MAINE	2.2	344	344	600	312.7	292	91.0	440
MARYLAND	22.7	1,076	1,371	3,045	130.1	1,199	52.6	1,040
MASSACHUSETTS	26.7	1,506	1,236	2,037	150.9	871	32.6	1,421
MICHIGAN E	23.4	2,221	2,048	4,281	127.5	1,025	57.0	2,136
MICHIGAN W	6.4	666	639	1,327	217.0	639	98.6	673
MINNESOTA	11.5	865	1,039	1,039	104.5	864	70.2	631
MISSISSIPPI N	6.5	193	267	267	178.7	267	31.7	219
MISSISSIPPI S	6.0	619	637	1,026	171.6	527	81.0	499
MISSOURI E	16.9	375	726	1,114	65.9	717	62.0	397
MISSOURI W	15.4	206	1,095	2,291	140.7	2,503	180.1	740
MONTANA	6.5	236	327	555	125.5	377	63.7	180
NEBRASKA	6.0	326	459	765	163.5	452	64.1	333
NEVADA	7.4	266	266	452	169.0	322	63.5	258
NEW HAMPSHIRE	2.6	187	187	271	180.2	156	60.7	169
NEW JERSEY	54.6	2,316	2,831	6,349	79.0	1,585	28.0	2,700
NEW MEXICO	12.3	640	1,071	1,071	69.2	552	60.0	510
NEW YORK N	6.1	776	526	1,332	168.7	605	50.9	657
NEW YORK E	56.7	6,767	2,695	7,012	130.2	2,281	38.8	2,017
NEW YORK S	119.4	6,062	2,255	7,117	60.3	2,503	18.0	5,450
NEW YORK W	11.2	862	1,012	1,012	101.2	621	52.3	1,002
N CAROLINA E	6.5	601	639	1,323	230.2	602	100.5	530
N CAROLINA W	6.5	312	512	626	163.1	512	110.0	337
N CAROLINA S	6.1	254	569	762	105.6	609	99.7	353
NORTH CAROLINA	3.0	167	236	633	113.9	256	67.5	177
OHIO NORTH	18.4	2,333	2,010	6,343	235.6	1,398	75.5	2,058
OHIO SOUTH	16.0	1,637	1,023	3,077	236.1	1,632	111.7	1,065
OKLAHOMA N	6.5	263	263	634	160.0	589	113.0	330
OKLAHOMA E	2.5	176	293	639	197.0	312	129.8	157
OKLAHOMA W	7.1	669	611	1,043	236.0	670	110.9	450
OREGON	16.7	659	611	1,043	99.3	711	60.3	760
PENNSYLVANIA E	36.7	1,677	5,501	3,257	60.1	1,683	60.5	1,650
PENNSYLVANIA W	6.9	627	755	1,542	229.2	955	130.4	627
PENNSYLVANIA S	16.4	615	960	1,775	91.0	960	60.0	607
Puerto Rico	1.3	1,312	2,000	2,000	210.0	501	77.7	1,307
RHODE ISLAND	6.5	325	268	317	131.7	268	60.2	365
S CAROLINA	16.6	1,677	1,537	3,814	213.6	1,665	108.3	1,529
S DAKOTA	6.1	233	346	579	45.1	335	69.2	264
TENNESSEE E	6.1	350	626	791	129.6	671	77.2	322
TENNESSEE W	7.4	361	626	1,085	135.0	602	59.7	503
TENNESSEE S	6.7	545	676	981	151.1	360	35.1	691
TEXAS NORTH	24.0	1,250	1,009	2,019	189.0	1,313	59.7	1,369
TEXAS EAST	6.2	519	576	1,007	127.0	500	67.3	657
TEXAS SOUTH	26.4	1,547	1,034	2,393	115.4	1,774	60.3	1,019
TEXAS WEST	19.5	1,021	1,007	2,029	120.5	1,264	60.0	1,100
UTAH	5.9	659	670	926	160.3	516	93.8	419
VERMONT	2.0	229	213	442	157.0	211	75.3	231
VIRGINIA E	21.4	638	1,096	2,335	167.1	1,007	60.2	605
VIRGINIA W	6.4	960	631	1,077	63.1	960	210.5	607
WASHINGTON E	5.0	230	266	604	120.0	332	60.0	212
WASHINGTON W	21.7	1,236	1,242	2,376	169.0	1,071	67.7	963
WEST VIRGINIA N	2.0	340	176	546	262.0	199	90.5	325
WEST VIRGINIA S	7.0	2,016	1,009	3,025	690.6	1,236	102.0	2,109
WISCONSIN E	11.4	603	587	1,308	121.9	559	67.3	631
WISCONSIN W	6.4	624	672	1,076	269.0	790	90.0	617
WYOMING	2.0	90	100	100	130.0	100	70.0	100
CANAL ZONE	2.0	34	616	453	226.0	492	201.0	48
GUAM	1.9	22	314	330	330.0	32	38.0	300
VIRGIN ISLANDS	6.3	343	606	909	107.4	369	65.0	637
TOTALS	1615.8	69,302	85,128	176,002	123.2	10,071	56.2	90,005

1/ 10/1/77 PENDING FIGURES ADJUSTED TO REFLECT COLLECTIONS REPORTED BY UNITED STATES ATTORNEYS OFFICES

2/ INCLUDES 1232 CASES INITIATED BY TRANSFER FROM 20

3/ INCLUDES 1232 CASES INITIATED BY TRANSFER FROM 20

4/ AND 1232 CASES INITIATED BY SUPERSEDITION INDICENT OR INFORMATION

5/ EXCLUDES LAND ACQUISITION CASES

SOURCE: U.S. Department of Justice. Statistical Report, U.S. Attorneys' Offices, Fiscal Year, 1978. Washington, D.C.: OGCPO, 1979, 50 p.

What seems required is some detailed investigation of the ways manpower is allocated to the same kinds of cases in different districts and of how the organization of these offices affects the gathering, processing, and reporting of information. Attention also needs to be paid to the development of common concepts and metrics for comparison among the offices of a domain, and among the domains, given the seeming magnitude of such differences.

The Integration of an Agency's Functions. Agencies vary a great deal in the horizontal and vertical or hierarchical segmentation or integration of functions for which they have legal enforcement mandates. Some agencies are horizontally integrated around a segmented function. The Internal Revenue Service (IRS) is integrated around the administration and enforcement of most internal revenue matters, particularly tax collections, and the United States Postal Service (USPS) is integrated around the collection and delivery of mail. Others are vertically integrated around segmented functions, such as the Federal Communications Commission (FCC) around functions such as broadcasting and common-carrier communications, and the Small Business Administration (SBA) around segmented functions such as financial and investment assistance, management and procurement assistance, and the development of minority businesses.

Horizontal integration exists when a particular function is organized around a broad range of actors. IRS and USPS are organized around the broadest range of actors of any regulatory or law enforcement system reporting white-collar law-breaking. Both include all forms of corporate and individual actors in segmented activities. Of all federal agencies, USPS may include the broadest range of actors since it includes almost the entire population of corporate and individual resident actors as well as a large number of foreign actors (international mailing). IRS has almost equally broad reach. Long (1980) estimates that approximately 95 of every 100 adult persons in the country file income tax returns and that a similar proportion of all children are reported as dependents. The proportion of all corporate actors included in IRS's mandate approaches 100 percent and the diversity is considerable, including trustees and executors, employers, corporations, agents, and partners. An index of the pervasive nature of the IRS is the extent to which it accounts for all reporting to Federal information systems. The Federal Paperwork Commission estimated that over 70 percent of the more than two billion submissions of forms to all federal agencies was tax related, or seven submissions for every person in the U.S. (Kaufman, 1977). Similarly, income and employment taxes now account for about 94 percent of all internal revenue in the United States (Treasury, 1979).

The spectrum of actors in these agencies horizontally integrate a range of segmented activities. For IRS, these include the collection of revenue from income, excise, estate, gift, and insurance or retirement activities. Relatively few monetary transactions take place that are not subject to taxation, whether of corporations or of individuals. Parenthetically, we note that state tax authorities similarly relate to a broad spectrum of actors in segmented activities, though their scope will vary among the several states, depending upon whether there is an individual income tax. Although a sales or occupational use tax may affect a broad range of actors, the transactions of the tax service may be restricted considerably by where responsibility is lodged for tax collection. The potential for actors violating the law in an area as pervasive as taxation depends upon where a system lodges responsibility for tax collection and reporting more than upon the spectrum of actors bearing the tax cost. Where there is no individual income tax, the population of potential tax violators is considerably smaller than where one exists. A somewhat narrower scope of activities is horizontally integrated in USPS. They include the design and maintenance of the postal rate structure, the development of mail classification standards, and the linking together of different classes of users in mailing and its delivery. The number of classes of users varies over time but a main object of the postal service is to link different classes of actors, such as advertisers with consumers, as well as actors within classes, as through personal correspondence.

Measuring Variations in Law Violations or Measuring Responses to Them

There have been two opposing positions historically in the measurement of crime, designated the institutional and the realist perspectives by Biderman and Reiss (1967:2). The institutional perspective argues that crime can be known only in terms of organized, legitimate social responses to it, i.e., a crime cannot be validly known to have taken place until some legal agency authorized to make a determination has done so. (In legal theory, this institutional perspective is dominated by the approach of "legal realism.") What Biderman and Reiss term "the realist perspective" holds that crimes are events with an independent existence in time and space; the problem is to find some means of detecting these actual occurrences. As Biderman and Reiss note, however, any knowledge of events depends upon socially organized ways of knowing whether they occur. The institutionalist-realist controversy in the field of crime statistics thus must be viewed from the perspective of comparing socially organized ways of knowing. Conceptually and empirically, the records of individual

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By way of beginning, it would seem quite obvious that, short of massive new data gathering strategies, one is dependent upon data collected by organized social response systems, particularly those of our several levels of government (we have relied mainly upon data from the Federal and local systems). There currently is no organized system of data collection that regularly and systematically collects information on white-collar law breaking independent of government information systems. Newspapers occasionally detect and report violations independent of government sources, but their reporting of white-collar law-breaking depends for the most part upon their own initiative, assignment schedule, and priorities.

Despite this current dependence upon official government information systems, it is useful to examine some ways that independent means of data collection might alter conclusions about white-collar law breaking based on government response systems as well reveal the problems encountered in defining and classifying events as white-collar law-breaking by means independent of governmentally organized response systems. In doing so, we shall repeat little of the discussion of independent measures in Chapter III. Our purpose here is to explore more general issues of measurement as they relate especially to measures of white-collar law-breaking developed by socially organized response systems, recognizing that these issues may pertain in some sense to other types of law violation as well.

A first and fundamental issue separating the institutional and realist perspectives on defining and classifying matters as white-collar law-breaking is how one separates legal from illegal matters. A strict institutionalist position relies upon defining "illegal" behavior by the socially organized responses (laws, rules, and orders) and the processes for determining whether particular matters fall under them (those of law enforcement and settlement of matters).

A second and closely related issue is what are the alternative processes to formal determinations by legally constituted processing systems and what are their limits? Here we face several issues of how one can classify and allocate events or behavior to legal categories. How can one operationalize the law independent of the legal and organizational processes created for its operationalization?

A third related issue is how can one relate independently developed systems of information on white-collar law-breaking to legal categories of law-breaking such as fraud, antitrust, or conspiracy?

Since these are related issues, our answers to them--if such they be--are in terms of problems that are common to one or more of the questions.

Motivation as an Element in Classifying Law Violations. A complex issue in defining matters as law violations and of classifying them into types of violations (e.g., as criminal or civil matters) is whether one must take motivation to engage in behavior, or intent, into account, and if so how this is to be done.

Compared with other types of law-breaking, a determination of intent is irrelevant in certain types of white-collar law violations, particularly those we have defined as compliance matters. A determination that a product is unsafe or that water is polluted by a given producer can be defined independently of the producer's intent in causing those conditions--the violation exists regardless of the intent. A failure to correct such matters by compliance need not involve any determination of intent, the act of noncompliance may depend solely on persistence of the original conditions defining the violation.

Despite the lack of any legal necessity to take intent into account in defining some kinds of violations, socially organized responses to them clearly do consider intent. They do so in at least two ways. One is in determining whether a matter shall be treated as noncompliance or as a violation after some period established for compliance has passed. The extension of any such period is founded on legal (administrative) determinations of intent, such as

whether a "good faith" or "reasonable" effort was made toward compliance. A second is that the intent of actors is often taken into account in any assessment of penalties for noncompliance, affecting thus the nature of the violation by a consideration of sanctions, e.g., whether the act is to be treated as an administrative, civil, or criminal violation.

Apart from this indirect way that behavioral intent enters into defining and classifying matters as legal or illegal, there are two other ways in which considerations of "intent" enter into defining white-collar law violations. First, the accidental or erroneous act must be distinguished from the intended act and second, the law may require a determination of intent.

One of our earlier examples illustrates how notions of error may be relevant in defining some law violations. The IRS ordinarily presumes that simple errors in arithmetic are unintended rather than intended, though they could be either in a specific instance. Error here becomes a procedure for defining what constitutes compliance with one standard for a tax return. But determinations of error also enter into conceptions of whether to assess tax penalties. Where the law defines quite strictly the nature of penalties for certain kinds of noncompliance, there is little attention to intent. Still tax violations, as Long has noted (1980), cover a diverse array of activities that have little to do with negligence or fraud per se. With a very complex Internal Revenue Code, inadvertence and omission are easily treated as "errors." Nonetheless certain of these errors, such as overpayment, are not handled as violations while others are considered violations. Moreover, the serious tax offenses where negligence and fraud are criteria involve determinations of intent. Here one must separate "error" from "intent" or "negligent behavior" which may involve issues of "prudence" as well as of intent.

Any independent measure, then, must deal with matters of "intent" in separating the legal from the illegal and in determining different kinds of offenses that are illegal. These two issues, as Seidman (1977:16) notes, are separable. Error is critical to the definition of legal and illegal; it is less critical in defining some types of offenses.

The second way that "intent" enters into the law is that legal categories of violations may explicitly require a determination of intent for any behavior to fall into a category. Hence, any independent delineation of white-collar law-breaking that would classify matters into legal categories must take intent into account. Again, as Seidman notes (1977:17), it would be difficult to classify matters as "monopolistic practice" under Section 2 of the Sherman Act without taking intent into account, for Section 2 prohibits only that monopolization which is "unreasonable"

or "contrary" to the "public interest." Clearly, such criteria (reasonableness, consonance, and public interest) cannot be defined apart from a specific determination of law by the Antitrust Division of the U.S. Department of Justice and by U.S. Attorneys and Courts. What is "reasonable" and what is "in the public interest" can be developed as standards based on the case law. But, in an important sense, their application to each case depends upon how those qualified to determine such matters decide applicability issues.

Not only must one depend upon judicial determination in such matters but much may also depend upon the advice of experts. For example, tax reports frequently are prepared on the basis of considerable legal and tax accounting advice--opinions that ordinarily are presumed to be "honest" ones of "experts," and not subject to any conflict of interest. Yet there can be disagreement in such matters that is attributable neither to error nor to "intent" but to differences of opinion among tax authorities that can be resolved only by some socially organized response with authority to make such determinations.

Finally, there is the matter of defining and operationalizing "intent." Apart from the fact that the law at times may provide some guidance in determining whether matters are to be considered intended, it is apparent that intent must be inferred as a property of activity. Intent is not directly observable and thus poses problems for defining not only violations per se but more especially those that are to be treated as criminal violations of law. Now, as we have noted previously, matters of intent are especially difficult in white-collar violations of law owing to the fact that many such violations are subject to control of information both by violators and by those who respond to them.

We have noted repeatedly that white-collar offenses present special problems of evidence because of the difficulty of securing evidence, given a violator's opportunities to thwart detection and, once detected, to destroy or confound the evidence. It is precisely evidence on "intent" that can be most deliberately cloaked, since one's position of power provides many opportunities to camouflage such evidence. This makes it especially difficult, as we have noted, to prove conspiracy among persons of power.

But it must not be forgotten that the rule of law also requires that information introduced into legal proceedings meet evidentiary standards. White-collar offense proceedings--particularly those that entail large legal staffs--ordinarily include a large number of motions, the fate of which determines what is to be charged and what is

to be admitted in evidence. Any means of defining white-collar offenses independent of legal proceedings must rest upon criteria that ignore legal determinations for it seems unlikely that one can simulate them with any degree of reasonableness or accuracy.

Just how important evidence may be in white-collar violations of law can be seen from the way that white-collar offense proceedings involve the use of the subpoena to secure evidence that is held by defendants and plaintiffs or in the use of "discovery" in such proceedings. Moreover, it is not uncommon in some kinds of offenses to seize and impound property as evidence and to hold it for settlement of prospective claims arising from a determination.

Where ordinary crimes or violations of law are thought to have taken place, the amount of evidence ordinarily is relatively small. The same may also be true for many white-collar violations of law. But a small minority of white-collar violations of law (and those for organized crime as well) involve very substantial bodies of evidence. Any independent means for categorizing matters as white-collar law violations would of necessity have to cope with such substantial bodies of evidence unless it were based solely on self-reporting of violations. An antitrust case, for example, may involve literally tons of paper, evidence that might need to be examined to classify a given instance. How would one determine "criminal" antitrust without an enormous burden of documentary evidence? Indeed, wherever judicial proceedings take a long period of time to establish the charges and introduce the evidence, it seems obvious that any means for a determination independent of social response is unlikely, since in many instances the information cannot be assembled apart from the social response agency.

Means of Classifying Law Violations Independent of Social Control Agencies. What typically passes as an independent means of defining and classifying matters as law violations may in the white-collar case be uniquely dependent upon the agencies of social control for the collection of information that can be assessed by some independent means, not upon some independent means of data collection.

Let us look at this problem in yet one more way. Where the violators are persons, it may be that self-reporting techniques can be utilized quite reliably as means for defining white-collar violations of law. But where the offenders are organizational actors, the matter is far more complex. Reliance upon only the testimony of actors inevitably invites conflict in testimony which cannot be resolved by any self-reporting means. Where resort is made to any other means, the source ordinarily turns out to be organizational records. Unless records exist that are

independent of creation and control by the violators and agencies of social control, the criteria of "independence" are especially difficult to satisfy.

Many of the concepts utilized to describe and analyze violations of law derive from governmentally organized response systems, such as the actions of these systems in the conceptual form of determinations, sanctions, and settlements. Such concepts take on rather different meanings when any attempt is made to measure them apart from the organization of government response. One can think of both formal and informal modes of response to law violations and some means of measuring each of them. But it is one thing to determine how different publics or groups might respond to the same matters of fact--as in simulated jury studies--and rather another to collect information on which matters actually are taken to juries and what decisions were made in a given case. One can explore a whole range of social responses to legal decisions and sanctions ignoring governmentally organized responses to given incidents, but these matters are conceptually and analytically distinct from independent measures of what the system does.

What should be apparent by now is that independent assessments ordinarily relate to matters of classifying how much and what kind of law violation "there is" and how and in what ways such assessments differ from the measures reported by socially organized response systems. Even at the juncture of "how much crime," however, we have suggested that one cannot perhaps resolve satisfactorily the question of whether one has means of measuring that are independent of the governmental response systems.

Concluding Observations

There have been two recurring themes in our consideration of problems, issues, and strategies towards developing a general system of indicators for white-collar law-breaking.

One of these themes is that statistical indicators are an important element in the exercise of social control by any agency, but that their development and use is substantially shaped by those same agents of social control. That agency shaping of indicators must be taken into account not only in understanding social indicators but also in using them for tests of substantive theory.

A second theme, one to which we shall return in the concluding chapter on research, is that tests of substantive theories are highly dependent upon institutionally organized information systems. The understanding of information systems, thus, is as critical to substantive theory as it is to social reporting.

VI. CONCEPTUALIZING, CLASSIFYING, AND COUNTING WHITE-COLLAR LAW VIOLATIONS

Social Organization and Conceptualizing, Classifying, and Counting Law Violations

Problems of conceptualizing, classifying and counting white-collar law violations arise from the social organization of behavior and its social processing as unlawful. Our main emphasis in this chapter falls upon socially organized reactions to unlawful behavior by formal governmental organization. The reader must recognize that a full treatment requires much more--a consideration of nongovernmental reactions as well and of informal as well as of formal organization.

There are numerous conceptual issues that arise when one attempts to assess sources of data on white-collar law-breaking. A number of them relating to the development of classification systems, their constituent elements, and the organization of classifications and classifying matters into them are discussed below.

Legal Criteria for Classifying and Counting Matters as Law Violations. There are a number of ways that the social organization of the law and its application create conceptualization and classification problems in counting matters related to white-collar law-breaking. First, in civil law countries, the legal criteria for classifying matters as law violations are specified quite precisely and defined in standardized ways within the code. This formal separation of the definition of concepts and the criteria to be used in treating matters as legal is codified law is advantageous in defining and classifying matters as law violations. For common-law countries, the matter is more open within the code. The criteria and their definition often depend upon a particular statute and its particular authority. It is far more difficult, therefore, to settle upon standard ways of conceptualizing and classifying matters as law violations, much less what might constitute a white-collar, organized, political, or ordinary crime. Indeed, any mention of organized or white-collar crime or law violations in a particular statute is likely to leave it undefined or to define it in ways that may be somewhat inconsistent with other statutory definitions. The relative absence of the continental form of codification in American law thus has its consequences for the development of uniform concepts and their measurement. Indeed, the American law rests very much in an institutionalist perspective that leaves many such matters to discretionary decision making and to case law.

Second, the treatment of matters under the rule-making and administrative powers of administrative law complicates these conceptual problems still further, for there are far fewer constraints on conceptualizing matters in the Federal Code of Regulations than under the Federal criminal or civil codes, even granting that all administrative matters can ultimately wind up in the courts. In actuality, very few do. And an agency constrained only by rather broad presumptions about rules and sanctions, develops its own concepts and measures. It would be misleading to suggest that there is not considerable uniformity in concept and in measure among agencies. There is, if for no other reason than the fact that lawyers are responsible for formulating most rules; no lawyer is unresponsive to his particular agency and the rules reflect its particular goals.

More important than their roles in classifying matters is the lawyers' role in operationalizing and counting them. A lawyer's determination of what constitutes appropriate criteria may be overriding.

Legal criteria complicate the matter of conceptualization and operationalization of matters as lawful and unlawful in a third and still more important way--by combining legal criteria and concepts in varying ways for application to the same or related events. Although this problem exists for classifying all law violation, it is especially pertinent to white-collar law violations and perhaps also to organized crime. We use the following case to illustrate this point (U.S. Department of Justice Release, October 31, 1979 CRM 202-633-2014):

A federal grand jury in Alexandria, Virginia, today indicted a Maryland computer corporation, its president, and a former employee of computer firms holding Government contracts on charges of conspiracy, fraud, and kickbacks.

Attorney General Benjamin R. Civiletti said the 37-count indictment was returned in the U.S. District Court in Alexandria.

Named as defendants were:

Icarus Corporation, a Maryland firm with offices in Rockville, Maryland, which sells and services a computer program that estimates the cost of building chemical processing plants;

Herbert G. Blecker, 43, of Potomac, Maryland, president of Icarus;

Peter C. Loux, 44, of Denver, Colorado, a former employee of Computer Sciences Corporation and National CSS, Inc.

The first count charged Icarus, Blecker, and Loux with conspiracy to defraud the United States by falsifying job resumes of Icarus employees that were used as a basis by the firm to bill the General Services Administration (GSA) under a negotiated contract for computer services.

As part of the conspiracy, the indictment charged, Icarus and Blecker made kickback payments to Loux for work Loux would steer to Icarus and Blecker under Government contracts. The payments were made through a "shell" corporation, Data Processing and Technical Consultants, Inc., and its president, Paul D. Scanlon, an unindicted co-conspirator, the indictment said.

Counts 2 through 11 charged Loux received payments of \$35,400 from Blecker and Icarus from November, 1974, to October, 1975, in violation of the statute prohibiting kickbacks.

Counts 12 through 21 charged Blecker and Icarus paid \$35,400 to Loux in violation of the same statute.

Counts 22 through 25 charged kickbacks of \$1,724.80 were made and received on a contract National CSS had with the Department of Transportation.

Counts 26 through 29 charged interstate travel violations in connection with the kickback payments.

Counts 30 through 35 charged Icarus, Blecker, and Loux made false claims to GSA in connection with consulting services based on false resumes.

Counts 36 and 37 charged mail fraud in connection with charges made for consulting services based on false resumes.

The maximum penalty upon conviction on each count:

Conspiracy (18 U.S.C. 371) five years in prison and a \$10,000 fine;

Anti-kickback statute (41 U.S.C. 51-54) two years in prison and a \$40,000 fine;

Filing of false claims on the Government (18 U.S.C. 287) five years in prison and a \$10,000 fine;

Interstate travel violation (18 U.S.C. 1952) five years in prison and a \$10,000 fine; and

Mail fraud (18 U.S.C. 1341) five years in prison and a \$10,000 fine.

The indictment is a result of investigations undertaken by the Justice Department Task Force on GSA, in cooperation with the Federal Bureau of Investigation and the Inspector General's Office of GSA.

A first and most obvious way in which the application of legal criteria to events complicates this definition and counting is that a whole series of events may be treated either separately or as a single event by applying some of the same and some different legal criteria to them. In our example we note that each of the defendants was charged with conspiracy to defraud by falsifying job resumes and making kickback payments for work through a "shell" corporation (Count 1) while at the same time Mr. Loux was charged separately for receiving prohibited kickbacks (Counts 2-11), and Blecker and Icarus were charged with making prohibited kickback payments (Counts 12-21). There is a similar overlap with the other separate charges related to the conspiracy.

The second way is that many of the same matters could be treated by more than a single charge--in this case conspiracy, which is quite difficult to prove, and mail fraud, which is relatively easy of proof. Thus legal strategies of evidence and proof can affect classification of the same events or set of events into two or more different classes.

A third way is that there is no defined or known limit to the charges that might be placed with respect to the same or to relatively similar events. One can be reasonably certain that 37 is well below the maximum number of counts that could have been entered in the above case. Moreover, a closely related type of case might have quite different kinds of counts, though charges of conspiracy and mail fraud might serve as principle legal strategy choices in both.

A fourth way, less evident in our example, is that complex events involving multiple parties may give rise to additional charges as a consequence of differences in the response of parties to the "legal events," e.g., a charge of obstructing justice or one of being involved in the same behavior with yet another set of offenders.

A fifth way, also less evident, is that just as concepts applied to defining the law violation can vary so the matter of penalties, of defendants, and of any other way that we might wish to classify these "cases" can vary. In

the above case, there is no way of talking about a single outcome in terms of penalties but of many potential outcomes that might be applicable in different ways to the different defendants.

What this should make abundantly clear is that the range and choice of legal criteria and the conceptualization of the matters and their properties to which the criteria are applied have no set limits so that one might arrive independently at an identical determination. In the foregoing example, it is quite conceivable that another set of lawyers might have arrived not only at a different number of counts for each of the types of violation, but might have changed more or fewer types of violations. Any determination of white-collar violations in legal terms, thus, depends very much upon what choices one makes about what matters and which of their properties are to be classified, and then about what concepts are to be applied to them. In doing so, one may be applying different legal criteria that depend upon the application of a broad spectrum of legal statutes and of criteria about law violations. We cannot expect, then, that the same or similar events or matters can be conceptualized and classified in unique or in the same ways when legal criteria and concepts are applied.

There is a sixth, though closely related, source of complication when legal criteria and concepts are used to define events. White-collar law violations cannot be classified meaningfully without resort to institutional and organizational criteria, particularly those related to organized legal systems. To cite but a single example, whether a particular practice or situation constitutes an antitrust violation is not readily predictable in advance of its final adjudication. Meanwhile a host of parties, including lawyers and economists, and a host of organizations within and without the legal system will have contributed to that final determination. Thus, the legal realist view that violations are defined by their litigation or adjudication is peculiarly the case for many white-collar law violations. The law is what the law does--from that perspective.

Because legal practice and determinations are essential to applying legal criteria or concepts to matters, any attempt to apply them independent of institutional and organizational determinations is an abstract exercise. Even more important is the fact that this also gives rise to variability among persons who have the responsibility for classifying matters. The conceptualization and classification task is in itself highly unpredictable across agencies and their individual members.

Substantial ambiguity also surrounds the development of standard definitions of white-collar law violations using legal criteria because quite commonly more than one legal agency is involved in defining violations for the same law. This problem becomes acute when what is charged involves the federal criminal code or a statute confers jurisdiction on more than a single regulatory agency. The main reason for ambiguity is simple: each authority or separate jurisdiction uses different resources and procedures and each follows different institutional and jurisdiction mandates to define and process events as violations. Most agencies have the power to refer matters as fraud, but we will find great variation among them as to what defines a fraud, since the line between theft and fraud is a thin one and agencies will vary considerably in choosing between them prior to any referral for prosecution. Similarly, where there is concurrent federal and state jurisdiction, the problem of a common standard when applying legal criteria is fraught with even greater ambiguity.

A seventh source of complication when legal criteria are used to conceptualize matters is that both the elements of the class and their constituent subclasses change considerably over time. Though the basic definition may seem to remain reasonably standard in some instances, the creation of new subclasses alters substantially what is conceptualized, measured, and counted in the more general class. The addition of statutes on product labeling, truth-in-lending, and consumer warranties, for example, has had considerable effect upon what at law is fraud and what in practice is adjudicated as fraud. Superficially one may assume that one has attained comparability of violation reporting simply by excluding these "new" violation subclasses from a series or by reporting them separately. But the matter is nowhere near that simple. Often the addition of sub-classes of offenses either amends the basic meaning of the statute, or its meaning is substantially altered by institutional practice. Moreover, the development of such subclasses can have substantial implications for more than a single statute. What now is fraud in a given case may formerly have been treated as a form of theft.

At best, then, as Edelhertz's (1970) classification of white-collar offenses demonstrates, although legislation has a considerable impact on what events are defined as white-collar crimes and on how they can be reported, the creation of generic types of white-collar offenses depends upon criteria and decisions for aggregating these sub-classes. As with the UCR system of crime reporting, in which an event may involve more than one Index crime and its classification may depend upon rules for reporting an event, a single instance of white-collar law violation often involves more than one type of white-collar law-breaking. At best, stable

indicators for white-collar violations are likely to be developed and reported only for particular sub-classes. The value of the indicators is enhanced if they can be disaggregated and reported separately for each collection agent and if problems of multiple classification are resolved.

An eighth source of complication is variation in classifying matters due to differences among statutes in limits they set to the right of civil action or of the sovereign right to criminal prosecution. Where there are statutes of limitations, they can have considerable effect both on conceptualizing specific violations of law, as well as on whether or not a particular action will be brought or prosecution undertaken. Antitrust law, for example, generally lacks a statute of limitations and it is not uncommon to build cases and to include evidence for long time periods. The absence of any statute of limitations for criminal antitrust cases has been particularly controversial at law. By contrast, most areas of the tax law have a statute of limitations, except for the violation of "failure to file" where there is no time limit on bringing an action.

Just how complicated the law may be with respect to defining different matters under a statute of limitations is illustrated by the proposed Section 706 of Title 18 of the U.S. Code, which refers only to criminal matters. The section on statute of limitations begins by replacing the current flat five years after the commission of the offense to begin prosecution to provisions of 5 years for a felony, 2 years for a misdemeanor, and one year for an infraction. After treating technical matters relating to the calculation of the five year period, such as excluding times when the accused is a fugitive from justice, the statute goes on to specify the conditions under which the period may be extended (HR Subcommittee on Criminal Justice, 90th Congress, 1st Session):

"(d) If the period prescribed in subsection (a) of this section has expired, and if not more than 3 years have passed since the date of such expiration, a prosecution may nevertheless be commenced--

- (1) for an offense in which a material element is either fraud or a breach of a fiduciary obligation, at any time within one year after the facts relating to the offense became known to, or reasonably should have become known by, a Federal public servant who is charged with responsibility for acting with respect to such circumstances and who is not an accomplice in the offense:

(2) for an offense based on official conduct in office by a public servant, at any time during which the defendant is a public servant or within 2 years after the defendant ceases to be a public servant, or

(3) for an offense based on concealment of assets of a bankrupt or other debtor, at any time until the debtor has received a discharge or until a discharge has been denied."

Note that these extensions refer to matters that ordinarily might be treated in part, at least, as white-collar violations and indeed for some, almost exclusively so. Thus, the extension of the statutory period for criminal prosecution may be more germane to white-collar than to other offenders.

The definition of what constitutes an offense for purposes of a statute of limitations likewise appears to take into account the special nature of white-collar law-breaking. The proposed code thus provides that with respect to the statute of limitations, an offense has been committed--

"(1) if the offense is other than a continuing offense, on the occurrence of the last remaining element of the offense; or

(2) if the offense is a continuing offense involving--

(A) criminal conspiracy, on the day of the occurrence of the most recent conduct to effect any objective of the conspiracy for which the defendant is responsible, or on the day of the frustration of the last remaining objective of the conspiracy, or on the day the conspiracy is terminated or finally abandoned;

(B) a failure, neglect, or refusal to register, on the day the defendant registers as required, or on the day the duty to register ceases; or

(C) a prolonged course of conduct which the statute plainly appears to treat as a continuing offense, on the day the course of conduct terminates."

Yet even where there is a statute of limitation, it will hardly be as fixed as many common-sense notions suggest. One can always reach beyond the statutory period for evidence if one can demonstrate to the Court's satisfaction that there is a relationship to the current charges. In the tax law, for example, such relationships

may readily extend to whether a particular exemption had been claimed in the past or whether a property transaction was previously reported.

A statute of limitations ordinarily has little effect on classifying events. But it can be quite important in areas where the legal criteria require demonstration of behavior over extended periods of time. This is especially the case with proving generic kinds of law violation, such as "conspiracy," or specific kinds of statutory violations, such as antitrust, that require information over extended periods of time.

Informal norms and policies rather than formal statutes of limitations are perhaps the more important in defining matters as violations. The IRS, for example, normally does not extend its audit procedure beyond a three-year period even though it has statutory authority for seven years. Such administrative policies setting limits to investigation may have considerable implication for what is defined and classified as illegal. Indeed, if one assumes that many white-collar violations have relatively large time lags for their detection and even longer ones for their investigation, many may be dropped because of statutory limits. Little is known about such matters.

The statute of limitations, then, is just one aspect of how an agency determines what is worthy of "current" investigation. Discontinuities in counts can easily result where an independent procedure does not operate under similar constraints. Any attempt to classify white-collar violations that are "unreported" or "uninvestigated" by an agency faces the problem that both statutory and administrative limits ordinarily would preclude their inclusion in a count.

A ninth source of complication is the extent to which legal criteria are specified in technical as contrasted with discretionary terms. Several consequences follow from the use of technical criteria in statutes, particularly the specification of a technical standard. There is far greater agreement about violation where standards are technical rather than discretionary. Thus the specification of a filing date or of a reporting date--such as the date for filing a tax return or a Form 10K SEC report--provide fairly uncomplicated means for determining compliance with the law. Phrases such as "exclusive use" lack technical precision, however, since the law often recognizes the difficulty of their demonstration.

Yet the more technical the specification of a legal criterion, the more idiosyncratic it is apt to be to a particular agency and the more difficult it becomes to subsume it into subclasses. Still if one seeks to treat

many technical violations as white-collar law violations, there are some more general categories that cut across agencies, e.g., "failure to file," "failure to register or secure a license," "failure to meet a technical standard."

One cannot simply ignore the fact that for many agencies, technical violations constitute a substantial proportion of their violations. Shapiro (1980:245) found that about one-fourth of all SEC investigations and 42 percent of those into the conduct of broker-dealers alleged technical violations by securities professionals. Almost half of these were violations of bookkeeping rules.

Relation of Legal to Other Definitional Criteria. Perhaps the most important consequence of the use of legal concepts and criteria for classifying matters is that ordinarily information is restricted to elements that are useful in determining legal matters. As a consequence, it often is impossible to use the information system of these agencies to test or use alternative systems of classification. Most cases will lack the kinds of information that are germane to legal classification and processing. This is a serious deficiency for any new modes of classification since it makes the development of analytical conceptualizations of white-collar or other law violations peculiarly dependent upon particular legal criteria and only those criteria.

This may turn out to be the case especially for the definition of white-collar law violation we have proposed in this report. It is quite apparent that we have set out a definition that is based only in part upon legal criteria. The conceptual element of "position of power" is not a legal criterion. Most current legal classes and subclasses of violation clearly are sufficiently heterogeneous so that not all members of the class would use a position of power to commit the violation. This may not be particularly consequential where most members of the subclass do so, but it is quite constraining where most do not. The problem is especially acute in separating white-collar from other forms of law-breaking. Thus most homicides undoubtedly are ordinary crimes. Only a few probably qualify as white-collar crimes, relatively speaking. We could not separate these cases from those that are ordinary crimes in any current information system. Whether one could do so by turning to the original sources of information remains to be determined.

One of the categories that poses major problems in separating white-collar from ordinary crime under the definition proposed in this report is the legal offense of fraud. Although a substantial proportion of all fraud might qualify as white-collar offenses, probably a majority of all offenses would not. Much fraud does not involve the use of

a position of power and thus would be classified as ordinary crime. Moreover, if one thinks of separating conceptually our four major types of law violation, fraud clearly can occur within any of our major subclasses: ordinary, political, organized, and white-collar.

We can, of course, make some ad hoc determinations as to how closely a class or subclass of law violation approximates our proposed definition. It seems reasonable to assume that antitrust and commodity exchange offenses may qualify as being made up almost exclusively of white-collar violations and homicide and robbery almost exclusively of ordinary crimes. Yet, in any accurate count, we would prefer to allocate the violations in any class to our major types of law violation.

It is unlikely that one could expect to persuade law enforcement or reporting systems to change their way of classifying events so that white-collar violations are always separated from other types of offenses--although the U.S. Attorneys currently are expected to do so (even though there are no specific criteria given to them to facilitate that assignment). Indeed, OMB requires that legal matters be classified into several types of law violation, including white-collar crime, in the allocation of resources by law enforcement agencies. This reliance upon legal criteria in information systems poses some rather serious problems for any statistical reporting system on white-collar law-breaking since a substantial proportion of many classes of crime or other law violations can be excluded from the count of white-collar offenses because of the absence of information on appropriate defining criteria.

One way to resolve this problem is to conduct studies periodically that estimate the contribution which each of the major types of law violation make to the major legal reporting category. These estimates could be used then to estimate the overall volume of white-collar or ordinary crime offending. It should be borne in mind that if one thinks of a statistical reporting system that reports both white-collar and ordinary offenses, then the merging of both types of offense in a single category creates problems of estimation for both white-collar and ordinary crime reporting systems.

The Elements of a Classification System

What to Count Conceptually. Underlying all of these considerations then is the central issue of what to count conceptually. The general approach to classifying and counting law violations is to assume that it is a simple matter to separate various properties of natural occurrences from one another and to isolate them in turn from their organizational or institutional properties. The matter is

nowhere near that simple for white-collar law violations because the occurrence of some kinds of events depends upon the institutional processes (e.g., a technical violation) and the properties of events (e.g., information about the offending party) are not always known. These factors, in turn, may have considerable consequences for conceptualization and counting.

Before examining systematically some of the ways that conceptualization of the elements in a classification system of white-collar law-violations relates to their counting, it may be helpful to indicate just how important conceptual issues are in classification and counting under our definition of a white-collar law violation. Our definition depends upon a conceptual element, the "use of a position of power" to commit the violation. The identification of this element of a violation depends almost entirely--though not invariably--upon the identification of one or more offending parties, at least to the extent that a party may be linked to a position of power. Where such parties are organizations, it may not be essential to identify the specific persons who may have been involved in the organizational offending, though there are instances where that will be required. The requirements that the offending party be identified, that that party's position of power be identified, and that it be linked to the gain or consequences resulting from a law violation are constraints upon related concepts and affect the counting of matters as white-collar law violations. A few examples may demonstrate how this is so.

Firstly, one of the consequences is that we cannot count any occurrence as a white-collar law violation unless there is some information about, or information that permits inference regarding, an offending party's position of power and its use; wherever that information is lacking either because the information was not obtained or more usually because no such information can be attached to known instances of law-breaking, there shall be an underestimation of the count. At the same time, we cannot develop a satisfactory concept of "white-collar offenses known to law enforcement" since many may be known only as part of that more inclusive class of "offenses known to the police" or to other law enforcement agents. The concept of an "attempted" white-collar offense similarly may be difficult to define and count. Many offenses that meet legal criteria as law violations will not be counted because of the way the system of detecting offenses operates, rather than because of the system of detecting offenders. In that sense, our counting--though not our definition--of white-collar law violations depends upon institutional and organizational processes of detecting events, gathering information about them, and processing that information.

But these are not the only ways that conceptualization of white-collar law-breaking in our definition affects counts and related conceptualizations. We must develop some operational measures of illegal gain or consequences and those very criteria will in turn affect any concepts and counts of gain and consequences and of measures related to them (e.g., penalties) since there are different penalties possible depending upon our concepts and measures of gain and consequences. Our original definition and its operationalization then has implications for a whole host of concepts and their counting.

Such problems are not unique to white-collar violations, of course, but once we depart from strictly legal criteria for conceptualizing and counting matters, we must recognize that most other classes related to those events must change also, since conceptual and counting schemes are highly interrelated and interdependent. We must recognize, for example, that legal penalties are attached to legal elements in concepts and not to the class itself in every case.

Our example has led us then to the first among issues under our definition relating to classifying and counting white-collar law violations. That issue is whether our conceptualization shall rest upon knowledge of offending parties, at least as to their status in events and their consequences. Inasmuch as our definition depends upon some knowledge of offending parties, several consequences flow from satisfying that criterion.

A first consequence is that we cannot separate among major types of offending. We cannot, for example, separate an ordinary from a white-collar offense as the definition of both will depend upon knowledge of the position of the offending party in the event. Parenthetically, we note that where the determination of status depends upon some criterion independent of the event, the offender also has to be known, as in Sutherland's definition of white-collar crimes.

A second effect is that the classification of offenses into subclasses may depend upon knowing an offender's status or position in an event. Some definitions, such as that of Edelhertz (1970), invoke offender status criteria for some classifications but not for others. The category "bank violations by bank officers, employees, and directors," for example, means that that offense "exists" only when the offender is known. This, by the way, is the case also for some ordinary crimes, such as "importuning" or "soliciting," "public drunkenness," or "driving without a license" to mention but a few of them. Thus, the law itself can define offenses which exist only when an offender exists. It would be an interesting exercise to extract such offenses from the

law and note their implications for current offense classifications. Others of Edelhertz's classes are not as clearly dependent upon knowing who is the offender, such as "fraud against government." One can learn, for example, that there is a check cashed that was drawn upon the government by someone who cannot be located. From other facts about the transaction one can infer fraud and hence classify it as a "fraud against the government" with no knowledge whatsoever about a particular offender.

A third result is that, without any criterion to distinguish among violations unless the offender or the offender's position in the event is known, we cannot conceptualize or count white-collar law violations simply in terms of properties that attach to the behavior of violating or its consequences. As we noted in our example above, we cannot count "offenses known" except insofar as they define an "offender known." Since many events could be white-collar violations if the offender were known (or correlatively would not be, if the offender were known), our counts will underestimate white-collar among all violations known. This problem arises, by the way, as a complicating element in tests of substance theory about white-collar law-breaking. Where there is reliance solely upon offender based events, one may well reach erroneous conclusions by assuming these are a representative sample of all events.

There are times, however, where the law compels attention to offenders because of its definition of an offense. The proposed revision of Title 18, U.S.C. defines a "fraud" as:

- (A) knowingly making a false statement;
- (B) intentionally omitting information from a statement necessary to prevent a portion of such statement from being misleading, or intentionally concealing a material fact, and thereby creating a false impression in such statement;
- (C) knowingly submitting or inviting reliance on a writing or recording that is false, forged, altered, or otherwise lacking in authenticity;
- (D) knowingly submitting or inviting reliance on a sample, specimen, map, photograph, boundary mark, or other object that is misleading in a material respect; or
- (E) knowingly using a trick, scheme, or device with intent to mislead;" (HR, Working Draft of the Subcommittee on Criminal Justice, 96th Congress, 1st Session, pp. 3-4).

This definition compels attention to offenders to define the offense of fraud, though whether or not that offender is "white-collar," ordinary, political, or organized, will depend upon additional information.

A fourth consequence is that the definition of an attempted offense is especially problematic in white-collar law-breaking. Where, as previously noted, the definition of the offense depends upon establishing intent and where intent, in turn, depends upon knowledge of the offender or where the definition of an event depends upon knowledge of an offender, we shall have difficulty determining white-collar violations as "attempts to commit" that violation. Indeed, for many white-collar law violation, we work primarily in the realm of "actual events" and their counts, since our conceptualization limits us to "actual" occurrences. The law may restrict our conceptualizing and counting "attempted occurrences" for some kinds of law violations and not for others. The law does not preclude our counting "attempts to defraud," even though one must establish intent on the part of an offender, since the offender may have been unable to actually defraud the intended victims. One cannot rely simply upon false statements to demonstrate fraud, as "intent" is an essential legal element. On the other hand, where the violation is a consequence of an "affirmative duty," it may be difficult to conceptualize "attempts."

A Classification Scheme for White-Collar Law Violations. A second major issue relating conceptualization to counting is the matter of developing a logical classification scheme for conceptualizing types of white-collar violations. The law itself has only rudimentary logical subclasses of violations and these are most apparent in the criminal law. We have been unable to find any particularly compelling logic behind any contemporary scheme for classifying white-collar law violations. The law itself provides no criteria that specify white-collar law violations or subclasser of them. We may use four classification schemes to illustrate the problems that arise for developing a logical framework to classify white-collar law violations: the classifications of the National District Attorneys' Association Economic Crime Digest code (1979:V, 18-19), of Edelhertz and his co-workers (1970:277-313), of Clinard (1979:88-90), and of Shapiro (1980:511-514).

Turning first to the classification of Edelhertz, we note that he acknowledges his scheme "is not intended to be all-inclusive, and could easily be expanded within each category" (1970:20; 1977:277-313). This very acknowledgment gives rise to one of the main problems in developing a classification system. When there are no criteria for determining the inclusiveness or exclusiveness of any class,

the choice of classes is arbitrary. Some of the major classes in the Edelhertz classification have many subclasses while others do not. Though one can easily think of more subclasses for any major class in the Edelhertz scheme, one lacks specific criteria for structuring subclasses since even the choice of prime categories is arbitrary.

Wherever particular statutes become the basis of classification, as is the case for many subclasses in the Edelhertz classification, the scheme becomes particularly vulnerable to extraneous criteria, such as legislative activity, in creating and altering particular statutes. Moreover, the number of subclasses becomes very large for even a restricted class of the scheme. Just how substantial are the problems of basing classification of white-collar law violations on legal statutes can be illustrated by comparing Edelhertz's classification of securities violations (1970:74) with that presented by Shapiro (1980:Appendix C). Entry C.10 in Edelhertz's scheme (1970:74) lists "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." Many securities violations are omitted from that description, even restricting the scheme to violations involving criminal sanctions. Shapiro, in fact, attempts to categorize all securities violations, whether or not they carry criminal penalties, on the basis of the violations of a particular securities act, section, and rule. She derives 69 constellations of statutory violation, only six of which each reflect 10 percent of the cases or more" (1980:233). There are many more possible depending upon what statutory or rule-making criteria are used. Shapiro notes that this low frequency of cases in her category scheme highlights problems of using statutory designations to different offenses, particularly problems in the discriminatory and analytical power of classifications based on statutory violations:

"Identical illegal conduct by an issuer may be proscribed in the 1933 Securities Act, by a broker-dealer in the 1934 Securities Exchange Act, by an investment advisor in the 1940 Investment Advisors Act, by an investment company in the 1940 Investment Company Act, and by an accountant or attorney in the SEC Rules of Practice. On the other hand, it doesn't discriminate enough. Almost a third of all investigations pertained to Section 17 of the 1933 Act, which generally proscribes fraud, untrue statements, and omissions and touting. Clearly one needs additional criteria to differentiate the huge assortment of securities frauds which investigators encounter and the contexts in which they occur." (1980:233)

Clearly then it is difficult to bound a classification scheme based on statutory authority and to determine a system of classes or categories within it. Even more importantly, such schemes will lack analytical utility, giving rise to both conceptual and counting problems, as the Shapiro example of classifying and counting SEC violations documents.

Another way that the absence of criteria for determining inclusiveness and exclusiveness of a classification system and of its subclasses is evident is in a comparison of the Edelhertz (1970) and National District Attorney's Association (NDAA) Economic Crime (1979) codes. Edelhertz at times utilizes the same subclass under several different major classifications. Thus, he has three different types of "frauds against the government." That these subclasses are not exhaustive of all frauds against the government is readily apparent from the NDAA code which treats "fraud against government, public agencies" as a major subclass under "Breach of Trust" with the following specific frauds (1979:18):

6.0 Fraud Against Government, Public Agencies

- 6.1. Licensing violations
- 6.2. Regulatory violations
- 6.3. Revenue violations: income tax
- 6.4. Revenue violations: sales and use tax
- 6.5. Welfare
- 6.6. Medicaid
- 6.7. Theft of utility services
- 6.8. Procurement

It is apparent that some frauds against the government are excluded from either classification, but particularly from the NDAA system, even if one treats "regulatory violations" as a residual category in the NDAA scheme. There is no provision, for example, for the revenue violations that involve excise taxes or employment taxes. An inspection of Internal Inspection reports will display many other types of frauds that cannot be classified under such a system.

Most of these classification systems probably are based on particular instances or particular statutes or particular agency matters and do not systematically consider all forms of violation that fit the underlying rationale of the classification scheme. Rationales in current schemes are implicit rather than explicit and lead to conceptual obfuscation, incompleteness in categorization, and problems in counting. Why, for example, the government should be treated as a victim to define some subclasses and not others is unclear in the Edelhertz and NDAA classifications. Nor is it clear why other kinds of victims are excluded in either classification system. Perhaps one reason is a

failure to determine explicitly whether the status of the victim or some victim attributes are an element in the classification scheme. When there are not clear rules for classifying and counting, as seems the case in these schemes, one cannot systematically classify and count, particularly to compare across agencies or to merge their separate counts. In the Edelhertz classification, for example, the appearance of only some of the subclasses of "frauds against government" will lead to an undercount unless there is a residual category that includes all other frauds against government (or they are treated in other categories, in which case there are undercounts in those classes).

The Clinard, et al., classification of violations (1979) raises yet other issues in classifying types of violations. When one departs from legal criteria in classifications, as is largely the case with their study, one is faced with structuring some alternative rationale. One ground for choosing a rationale is whether one wants a single- or multiple-dimensional scheme. Clinard and his co-workers choose a multiple dimensional scheme, but it has the drawback that no provision is made for a logical structure among the classes and subclasses. The Clinard et al. (1979) scheme, in fact, discloses the problems of developing several related classifications for the same events where there are no logical rules for determining subclasses.

There are four levels of classification in the Clinard et al. classification. The criteria for determining which subclasses comprise each of the levels and what distinguishes the levels are not explicitly formulated. The authors of the code report that they were:

"... led to the formulation of a four-tiered design for violations and enforcement actions, with each successive level representing greater detail. These categories had to be exhaustive, mutually exclusive and theoretically significant. This represented a major task that involved going through all the data cards to list each detail of each violation and enforcement action to determine the behavioral meaning of each factor. The variety of legalistic wordings of the data made this task difficult, but it was accomplished by constant checking of the statutes and annual reports as well as discussions with agency personnel" (1979:66).

They note subsequently: "Overall, the code that was developed provided an optimal balance between consistency and ease in coding and an excessive attention to detail" (1979:67). Nowhere can we determine exactly what constitute "exhaustive," "mutually exclusive" and "theoretically significant" criteria, and it is not easy to infer them from the categories listed under each of the levels. There are,

for example, the following classes in Level I (1979:Table 4): Administrative, Environmental, Financial, Labor, Manufacturing, Unfair Trade Practices and Other. One can readily think of reasons why these are not mutually exclusive categories. What is particularly disconcerting though is the question, by what rules would one derive additional classes under Level I that are now included in "Other"? This problem could easily arise were Clinard and his co-workers to include other federal agencies in their sample, such as the U.S. Department of Defense and its member agencies and their contracting.

Level II presents similar problems, and some new ones as well. Water and air pollution are separate categories, but it is unclear where other pollution violations would go, or why pollution is a subcategory, while another subcategory is tax violations and still another disclosure and yet another accounting. Moreover, there is no way of determining whether all unfair trade practice violations are provided for in the related trade practice categories at Level II or just which ones belong together at Level II, which is made up of 22 subcategories. There similarly are 62 Level III categories and 245 Level IV categories. Although one might achieve some reasonable levels of reliability in classifying cases into each level and one of its subcategories--though not with the rules and definitions currently provided--the rationale for these choices would be far from clear and their utility not readily apparent in analytical or theoretical terms. Since many of the subcategories at Level III have fewer than five cases of violation, one wonders whether there is much utility in further refinement at Level IV. Correspondingly we note that the classification has the problem of excessive detail that Shapiro called attention to in her SEC statutory classification (1980:233-34). One of their 62 Level III categories has 185 violations reported, or roughly 10 percent of all violations, while almost half of Level III subcategories (30 of 62) have a combined proportion of fewer than 4 percent of all violations (76 of 1860). Clearly, most of the Level III classes are of little analytical utility for the purposes of the Clinard report. Nor is the situation all that much better for the 22 different violations in Level II where the range is from one violation for "wage and hour violations" to 389 for "hazardous products" and 311 for "water pollution." Taken together, these two categories account for 38 percent of all violations.

The problem of an optimal classification system probably cannot be answered independent of the uses to which the system is to be put. For analytical purposes, one may want information classified in ways that are of less utility than they would be for social reporting or administrative decision making. For purposes of social reporting, it seems

reasonable to think of developing a system that is based on some principles of social utility. Not unlike the UCR reporting on a selected number of ordinary crimes, one might want to develop a white-collar law-breaking "indicator" or "index" based on a selected number of legal categories. Like the UCR, such a system of classification might include infrequent but socially important types of violations, such as those relating to price-fixing or even less frequent forms of antitrust as well as some categories that have high frequency counts (e.g., frauds). Whether one should attempt a logical classification for social indicators or an ad hoc one is problematic--any resolution of category selection will depend in part upon the feasibility of operationalization.

For a number of reasons, it will be no simple matter to select a small number of categories for reporting white-collar law-breaking. First, there is apt to be disagreement on the criteria that logically relate the violations one to another, whether the seriousness of their consequences, their frequency of occurrence in a population, the status of the offending parties, or what should be highlighted. Second, given the substantial number of violations, just as in ordinary crime, one will attend to only a relatively small proportion of the total. This may turn out to be a more serious matter for white-collar than for ordinary offense reporting since few major white-collar categories of violation are all that substantial in terms of numbers of violations. Third, the question of what kinds of violations to include--criminal, civil, or administrative--may be especially difficult to resolve in terms of white-collar law-breaking. Fourth, just as in the UCR, in white-collar law-breaking indicators, the categories selected are unlikely to be representative of types of violation or of types of victims and of violators. Inasmuch as white-collar violators often are organizations, there, finally, are special problems of determining whether there should be separate reporting for the two classes of violators (or correlatively victims). Even to report events that arise from different kinds of violators in the same categories may mislead as to their composition.

Not uncommonly in social indicators reporting, when one cannot secure a direct measure of an indicator, one may select some indirect measure of it. Seidman (1977:26-28) suggests that indirect measures might be developed for certain kinds of white-collar law-breaking. Both indirect and synthetic approaches have been used to estimate the extent of some forms of white-collar law violation and resulting losses. Economists, for example, infer price collusion from market patterns. The IRS (1979) study of unreported income on individual tax returns used both indirect and synthetic means to estimate revenue losses. Measures of illegal transactions (such as gambling, drugs,

and prostitution) and estimates of income derived from them were used to arrive at estimates of revenue losses. IRS also employed survey information on informal income-producing activities from consumer expenditure studies to derive estimates of unreported income by consumers; these in turn form some basis for estimating revenue losses. The effectiveness of such indirect and synthetic modes of estimating some forms of white-collar law-breaking and their consequences is worthy of exploration in future research.

What has been said of classification systems for violations applies in important measure to the classification and counting of other white-collar law-breaking concepts, whether of law enforcement classifications of forms of compliance and sanctioning or of the consequences of harm. This will become more apparent as we discuss the selection of units to measure white-collar law-breaking.

Who Classifies and Counts What, When, and Where. Classification schemes must be operationalized at some point if they are to be useful for social reporting or social research. This section begins with a discussion of selected problems in implementing classification and counting in socially organized collection and counting systems, particularly in federal law enforcement and regulatory systems. It concludes by considering how these and other problems affect research and the development of independent systems of classification and counting.

Regardless of who classifies and counts information on white-collar law-breaking, there are implicit forms of classification and counting inhering in all discretionary decisions. We assume that discretion is structured in large part by the informal and formal criteria operating at every level of decision making in an information processing system, but that it is especially critical at the initial stage of data collection. What we want to note here is that even when the actual procedures of classification and counting are centralized, there are implicit forms of classification and counting in the various processes of collecting information--the simple decisions about what to collect information about and what to ignore, which constitute instances for further investigation or inquiry and which do not, which matters are to be treated as complaints requiring further attention, and which are not. In short, the mobilization process is, from the perspective of an information processing system, an informal classification and counting system. Where the collection process is centralized, one perhaps may more readily observe those processes than where it is decentralized, but in either case, the criteria for classifying and their effect on counting are not easily detected.

Decentralization of Classification

What seems especially important in determining variability in classification and counting is the degree to which these processes are decentralized and the extent to which there is central control of them even in decentralized systems. Uniform Crime Reporting, for example, relies entirely upon local police departments to classify and count and then to report information in aggregate form to the Uniform Crime Reporting Section of the Federal Bureau of Investigation. The UCR Section is not in a position to exercise any direct supervision over the process, serving primarily to monitor incoming reports for their completeness or to respond to requests for information about classification and counting problems.

Before information is sent to UCR, however, cooperating jurisdictions convert their data into the uniform system for reporting and are instructed in the use of the system by the FBI. Most regulatory and law enforcement agencies rely upon local or regional classification systems, though the actual counting of events may be centralized. Both local and regional classification and counting may take place in some systems. Thus, the U.S. Attorneys and the clerks in the U.S. Courts classify and count all matters that fall within their local offices. Each of their central offices requires, however, that a form be completed on each of their cases and transmitted to the central office for standardized classification and counting. The United States Attorney's Statistical Reports are prepared by the Systems Design and Development Staff of the Office of Management and Finance of the U.S. Department of Justice, while centralized reporting on court cases is the responsibility of the Administrative Office of the U.S. Courts. Where classification is a local matter in a centralized reporting system, it is rare that the central system has full case documentation. The smaller the volume of any reporting system, however, the more likely that original case materials will reside with the central information system. The SEC is a low volume reporting system relative to most regulatory agencies and its Headquarters office acquires from its regional offices every closed docketed case. More commonly, however--and invariably in high volume violation reporting systems--the collected information remains decentralized (at least for substantial periods of time), and the processes of classification are altogether local. Such systems should make for more variability in how similar matters are classified and counted.

Among a group of regulatory agencies that we studied particularly intensively, we found that the actual classification task was decentralized in a substantial

minority of agencies. The dominant form of task organization was some pattern of local classification with regional review.

Where the initial source of information on a violation is by an inspection rather than on complaint or other mode of detection, classification of the violation ordinarily is done either in the field or at a divisional or regional office but rarely is it centralized beyond that. The OSHA, MSHA, and FDA inspectors make at least an initial classification in the field setting of a violation. FDA inspectors are required to give the company a written report before leaving the inspection site outlining perceived violation conditions. The inspector then prepares an "Establishment Inspection Report," which is reviewed by his District Compliance Branch Officer. That officer determines whether there has been a violation and whether further action is warranted. There can be other review levels invoked to consider FDA violations, depending upon what action is recommended with respect to them, such as review by a District Compliance Officer, a Bureau Compliance Officer, the Office of the Associate Counsel for Regulatory Affairs, the General Counsel's Office, and finally, in criminal and some civil matters, by a U.S. Attorney. At each of these review levels, the classification of the violation may change.

This example of FDA classification procedures illustrates the principle that the more review levels in a system, the greater the opportunity for classifying the same case in different ways. Yet, there is little, if any, evidence in regard to any agency on how substantial is reclassification. The practices that seem more probable than reclassification of a matter are to drop it from further consideration as a violation, to process it in accordance with the initial classification, or to dispose of the case without regard for its classification. Conclusions about the relationship between classifications and dispositions, then, are blurred for want of standardized procedures for reclassification. Still so little is known about the classification process within any agency that one cannot determine whether reclassification of matters is related to the kind and amount of previous processing. The more levels of review and the more decentralized the classification process, the more divergent are counts for the same class of violation between initiation as an agency matter and disposition.

Where one comes to depend upon centralized information systems, then it is important to understand how, where, and in what ways classifications are made and changed and how variable these processes are among units responsible for them. This understanding will provide clues not only to errors but also to the distribution of counts among classes.

Moreover, it will tell us a great deal about how we can treat such information in an aggregated system of social reporting. Finally, it will affect the extent to which the individual investigator will be able to reclassify and count matters. For many research investigations, this means that local information systems will provide the best opportunity for classification by independent criteria or procedures. Looked at another way, the more centralized the classification and counting, the more standardized its classification and counting, but the fewer the opportunities for reclassification to meet the requirements of some alternate classification system. This has several implications for any statistical reporting system on white-collar law-breaking.

Firstly, since all current systems of reporting violations depend primarily upon the law for their classification criteria, aggregation without reclassification depends upon legal categories. The most one could accomplish with a classification system using non-legal criteria is to do one of two things. Where such information is available in the information system, one can use the information to subclassify matters in any legal category. If, for instance, one wishes to treat organizational violations as different from individual ones, each violation category can be so classified by separate tabulation. The same might be true for the status of the victim or offender (e.g., government, profit and not-for-profit organizations, and private citizens as victims or offenders). The second option is to estimate by independent test the proportion of any legal category that does not conform to one's criteria. The disadvantage of this mode of reclassification is that it is not possible to have information on other characteristics of these cases in any reliable way, since those cases that fall outside the new class may well bias the distribution on any other characteristic.

Secondly, any substantial changes of reclassification ordinarily cannot take place at centralized levels of information systems. Indeed, the larger the classification system in terms of case volume, the less opportunity for reclassification. Substantial changes in classification thus depend upon altering agency procedures for collection and recording.

Thirdly, any reclassification system must take into account the fact that internal procedures for classification are intimately linked to administrative decisions about disposition. It is, therefore, more important that any independent classification seek information on variables that will define classes within a classification system than rely upon agency definitions and counts for the members of any class. On grounds of both logical consistency and

standardization of procedure, the classification of any matter on the basis of component elements is to be preferred to current procedures that depend upon higher-order judgments by coders about which matters belong in which class and what criteria separate one class from another.

The classification of matters rests very much upon the legal mandate of a particular agency. Few agencies have broad legal mandates to investigate and classify matters as violations. Most agencies are given responsibility only for enforcing the laws in their domain and have more limited responsibilities for criminal than other matters. Even an agency such as the FBI is restricted to criminal matters and only to the residual of criminal matters that are not allocated to other agencies. The FBI, in fact, turns out to have jurisdiction over more ordinary than white-collar matters even though it may substantially shift its resources from one type of crime to the other and thereby affect the composition of its caseload.

Given restrictions over accession and adjudication, most agencies fail to detect matters that do not fall within their domain. This means that many violations of law are overlooked because they lie outside a domain and there are few network agreements for their referral. Even where an agency develops information suggesting that violations probably take place that lie outside its authority, the agency ordinarily will ignore it in its information system, and will fail to refer the matter to another agency within whose legal mandate it lies. Many violations involving illegal sources of income, for example, probably involve tax violations as well, but most of them are not referred to tax authorities for possible investigation. Many involve misuse of the mails, but they are not referred to the U.S. Postal Inspection Service. Some matters coming to the attention of an agency, however, are brought to the attention of other agencies.

One reason that an agency may refer matters to another is because it regards the matter as falling under the second agency's mandate. The decision of an agency to refer is in most cases discretionary rather than mandatory, and it is likely that the volume of such referrals is not very large for any referring or receiving agency. Indeed, it would be interesting to investigate interagency exchanges of white-collar violations.

The few statistics we have been able to assemble on referrals from other agencies suggests that most of the cases of a given agency are generated by internal and external sources of mobilization independent of other agencies. Depending upon what base one selects for IRS tax violations, most tax matters are generated internally and perhaps less than one percent derive from referral by other

agencies. Shapiro (1980:337-38) estimates that 30 percent of all SEC cases come from other social control agencies. The major sources of these referrals were state securities commissions and other state agencies. The second largest source of referral was private, self-regulating agencies, such as stock exchanges, the National Association of Securities Dealers and the Better Business Bureaus. They contributed a proportion almost equal in amount to that of state sources of referral. Fewer than one in five matters were referred from all Federal sources. Of these, the U.S. Department of Justice was equal in importance with other Federal regulatory and law enforcement agencies. Thus, even where external sources of mobilization are fairly high for an agency, they account for only a small proportion of all cases of investigation for violation--probably no more than three percent in the case of SEC investigations.

We are not certain of the main reason for these low referral rates from other agencies since there is good reason to believe the eligible volume should be quite large. We suspect that one major explanation is that each agency seeks to maintain exclusive jurisdiction over its cases and refers matters only when it regards them as falling entirely within the mandate of some other agency or when for some other reason it seeks to withdraw from a case. This might be confirmed by examining how many cases for any agency involve shared disposition or handling of matters for the same case on referral from one or more other agencies. Our guess is that the number is small relative to what might be expected.

A second reason is that agencies are more likely to refer matters that involve possible criminal rather than other forms of violations. Indeed, there may be functional ignorance with respect to such other violations, given the complexity of USC, FCR and civil codes. It would be worthwhile to know the conditions under which an agency refers matters for criminal investigation and those under which it does not. There may well be informal presumptions that when an agency refers one of its own matters for criminal investigation or prosecution, the burden of investigating any other criminal matters lies with the specialized federal agency or prosecuting authority.

This is, in fact, the second reason that an agency refers matters. They are referred for criminal investigation and prosecution. Unless the agency has some criminal investigation or prosecution powers, it surrenders jurisdiction over whatever matters it chooses to refer. Ordinarily, an agency then will not proceed with other kinds of dispositions that derive from its legal mandate. The agency usually waits until the criminal matters are resolved

either by a decision to return the matter to the agency--by declining prosecution, for instance--or by the filing of charges in federal court.

Jurisdictional claims can inhibit both how matters are litigated or prosecuted and what other matters may be developed for a particular case. The tendency to maintain exclusive jurisdiction over a particular matter and a particular offending party is pronounced in federal enforcement and regulatory agencies, and probably influences decisions to refer all or part of any matter to another agency's domain. Recently, it was disclosed that the U.S. Department of Justice Civil Division was displeased with the failure of Department of Energy lawyers to cooperate in the preparation of civil cases in which the Government sought to recover more than one billion dollars in penalties and fines from oil refiners and other energy companies. The DOJ Civil Division alleged in hearings before the Senate Judiciary Committee that of the 105 Federal agencies it represented, the DOE was the most difficult with which to deal. DOE, it was reported, is one of at least 22 executive agencies and independent regulatory commissions that have obtained litigating authority on its own; the question of which matters DOE refers to DOJ for litigation is a matter of negotiated agreement. DOE responded by noting that its lawyers "knew the facts and the complex regulatory history" pertinent to oil pricing cases and that to instruct DOJ lawyers in these matters would be a "wasteful, duplicative and dilatory misuse of resources." It was noted as well that there are only 321 lawyers in the Civil Division of DOJ to litigate matters for the 105 Federal agencies it represents, while DOE has 217 lawyers for investigating and litigating DOE cases and 60 more for auditing refiners (New York Times, April 4, 1980, p. D3). Although this case presents more complex issues regarding the tendency of agencies to monopolize jurisdiction, it makes apparent the monopolistic tendencies of any agency. This must have a similar impact on referral of matters to any other agency.

A final condition under which an agency may share matters with another is when it is given a legal mandate to share information or cases with another agency. We previously have mentioned examples of such legal mandates. We do not know the extent of such sharing nor the extent to which the actual sharing of cases is avoided by negotiated agreement as to which agency will handle which matters. Such legal mandates tend to result in each agency maintaining exclusive jurisdiction over "its" matters. This appears to be the case in agreements as to which antitrust matters shall fall to the FTC and which to the Antitrust Division of DOJ. But quite clearly an investigation of these arrangements is essential to reach any definitive conclusion.

ISSUES AND PROBLEMS IN MEASURING AND COUNTING

The history of measuring law violations is a discourse on multiple units of measurement and reporting. Although a number of standard units have been developed over time to measure violations of the criminal law, there is substantially less agreement about proper measurements for civil or private matters. Moreover, despite the development of some standard units for criminal matters, such as the offense known to a law enforcement agency, the count of victims and victimizations, and counts of arrests or convictions of suspects (offenders), the complex relationships among events, offenses at law, and the parties to these events are far from standardized, much less counted.

There are two central issues in measuring and counting. The first is, what are the units for counting and how shall one count them? The second is, what are the appropriate bases for comparing and reporting counts?

What to Count.

What to count depends not only upon the conceptualization and use of social indicators or measures, but upon how one chooses to store and report information in light of these and other considerations. Among those other considerations are matters of the privacy of any unit for which information is stored and the extent to which agency matters are public information. We do not consider most of these matters of storing and reporting information here, though we recognize they are worth consideration. The one general issue concerning the storing and reporting of information that concerns us, however, is, in what form is information to be stored and reported as counts?

Where a system is designed primarily to store and report information as summary indicators, with the information aggregated across units of count, the units for storing information will be quite different from a system where the purpose is to provide considerable flexibility in defining units of count. Summary indicator systems for aggregate reporting tend to develop highly aggregated units of count; they tend, for instance, to store all violations in a limited number of types of offense. Systems aiming toward maximum flexibility preferably would store the component elements defining offenses, so that there can be different classifications for the same elements. Where that is infeasible, the most detailed system of offense reporting would be developed to store information. The advantages of storing component elements are obvious. One can always analyze how the component elements "behave," as well as how the class of which they are a part behaves. Summary indicators are useful primarily for aggregate national

reporting; the UCR reporting system is an example of such reporting. But any summary indicator system like UCR is highly limited for research or for purposes of examining the behavior of a reporting system. Such categories as we have previously noted also are less likely to be useful for white-collar law-breaking, since they are apt to change considerably over time due to changes in statutory law and its administration. Our discussion takes no explicit stance on which is the more appropriate strategy for storing information, but we assume that for research purposes one probably wants a quite detailed and differentiated data set.

Selecting Units for Counting. Just what units to select for counts will depend upon the purposes to which a counting system is put. But, assuming that one aim is to standardize counts across diverse agencies that deal with white-collar law-breaking, we are searching for the ways in which agencies complicate the problem of achieving standardized units and counts and the possibilities for arriving at some forms of standardization.

Relationship Among Elements in Violation Events. One of the more difficult problems in deciding what to count about violation events is to decide upon what events and what properties of events are salient. This is no simple matter as events are constituted from other properties or events and once constituted can be regarded as having other properties, such as time and space as well as properties that define them as events. Events also have component parts that may be salient for separate counting, all of which have their own properties that can be conceptualized and counted separately. Abstractly, there are victims and violators for events and there are properties that define them. But in addition, there are properties that define relationships among victims, violators, and violations. The relationship between a victim and a violator may have been contractual for example, and it is some failure to comply with the law governing the contract relationship that constitutes the violation. Whether or not we shall choose to count types of relationships in a classification and counting system will depend upon our goals, but certainly they are an element that may be of considerable importance for a variety of purposes.

One cannot resolve the question of what to count very well without considering whether and how the matter can be counted. Nowhere is this more apparent than in the case of determining what units or properties constitute violations as events or occurrences that shall be counted. Let us consider a number of these problems of determining what units to count before treating them more specifically in terms of specific counting problems.

An initial problem that arises is whether one shall count violations as 'events', events that give rise to violations, or violation events. Let us try to dissect this problem into a number of conceptual and operational issues.

We have noted repeatedly that events which seem to have a unity in time and space may be comprised of a large number of events, each of which might be counted as a single event (or where the pattern of events may comprise an event). We have chosen to illustrate this problem by the example of a conspiratorial event. But both conceptually and at law one faces the difficult problem of determining whether it is the relationship among separate occurrences or events (each of which may constitute some violation of law) that constitutes a "conspiratorial event," or that one or more particular properties of each event constitutes a conspiracy.

A single occurrence in time, moreover, e.g., a mine explosion, may constitute a base for counting violations (some mine explosions can be regarded as accidental) or as violation events (explosions that are violations) for which a count of separate violations can be made. If only those mine explosions are treated as violation events where one or more violations are used to define them, then the property of a violation event is not separate from the count of at least one event defined as a violation. A violation then may be regarded as a constituent property of the event or as a property independent of the properties that define events. To treat an event as a base for violations, it must be independent of properties that define violations.

An event likewise may be conceived of as comprising different violations because the same occurrence gives rise to multiple violations (e.g., it violates both civil and criminal provisions of the law) or because there are different occurrences each of which has one or more violations.

Finally, when we treat violations as properties of occurrences that are elements defining events, the occurrence of multiple violations makes it problematic how to define the violation event. A single event could be both a securities and a mail fraud. This problem ordinarily is solved by some rule of counting, such as a rule giving primacy to some violations rather than others. Clinard (1979:67) gives primacy to the "most serious" where there are multiple violations. Such rules also may be agency specific rather than based upon a property like "seriousness" which is presumed generic to violations. Thus, the violation event may be counted as a securities fraud by the SEC when it referred it to the federal prosecutor for prosecution and as a mail fraud on filing by the prosecution. In this particular example, it would be

difficult to establish the extent to which the mail fraud was essential or accidental in defining violation. Moreover, there may have been many more instances of mail fraud than events of securities fraud in the behavioral sequence, depending upon counting rules.

What these examples suggest is that where one or more violations attach to events, we can count both violation events and the number of violations in such events. Yet it probably will be more difficult to agree upon a standard definition of an event independent of its violation status than it will be to agree upon standard definitions of violations. We might, for example, find greater agreement about what constitutes a tax fraud than about what constitutes tax evasion, and about what constitutes tax evasion than what constitutes "evasions." Similarly, we might find greater agreement about what constitutes a specific kind of fraud, such as a tax or securities fraud, than about what constitutes all frauds. The explanation for this lack of consensual reliability lies in part in the empirical ways that specific behavior is labeled as a violation. White-collar law violations can arise from actions or activities, such as transactions involving the manufacture and sale of products or services, communications, such as advertising or declarations of value, and other major forms of behavior. But they also can arise from the failure to act, as in the failure to fulfill an affirmative duty. In brief, violation events for the most part assume their properties from having given rise to events that are labeled violations.

Some resolution of these ambiguities in determining events and their violation status also is essential for defining base rate concepts. The problem is an especially sticky one for concepts such as "opportunities" for violations.

Relationships Among Violations, Victims, and Violators in Events. A second problem arises from the ways that relationships among victims, violators and violations in events determine or bound measures and their measurement. Occurrences will differ considerably in the extent to which the status of victim and violator are significant elements and in the extent to which knowledge about them is forthcoming. Inevitably, in this connection, the problem of what to count is related to the question of how often and how accurately what is to be counted can be counted. Some illustrations again may help in considering the matter, e.g., what are the problems in developing measures of white-collar violation, victimization, and violating (offending) rates? And, what other measures might be developed, such as measures of the harm resulting from events?

Consider, first, the problem of choosing measures of white-collar law violation given the relationship between violations, victims, and violators. The following may be empirically observed for such events:

- (a) If there is more than one victim in an event, each victim need not be victimized by each violation;
- (b) If there is more than one violator in an event, each violator need not victimize each victim (event in the case of a single victim);
- (c) Different types of victims may be victimized by the same violation;
- (d) If there is more than one victim, the number of violations may depend upon the number of victims;
- (e) If there is more than one violator, the number of violations may depend upon the number of violators.

A few concrete illustrations may aid in perceiving the severity of these problems and the constraints they impose upon particular measures.

Imagine a case where a drug firm continues to market a drug that it knows to have harmful effects--effects the firm discovered after the drug had been approved for marketing but which it did not report to the FDA, though required by law.

First, who are the victims of such a violation? Is the government a victim because of the failure to notify? Which other organizations are to be treated as victims? Are the organizations that wholesale and retail the drug also victims? Are the physicians who prescribe it and the pharmacists who buy and dispense it victims? Are the victims only those who use the drug and can prove injury? Or, are they all of those who purchased the drug and used it one or more times and were at some risk? Are the victims those who can prove injury now or at some time in the future? Are the families of victims to be treated as victims, particularly if the harm is consequential for them as well? Is it possible, also, that competing drug firms may have been victimized through loss of the market to the offending drug firm?

And who are to be treated as the violators? Is the drug firm that manufactured and sold the drug the only violator? Are those employees who are regarded as having affirmative duties to disclose the matter to be regarded as violators? And how about those employed by the manufacturing firm who were responsible for the development

of knowledge about the harmful effects? Are the physicians who prescribed the drugs and who had some awareness of its possible harms in any way responsible for it, and should they be regarded as violators? Is there any culpability for the pharmacists? Moreover, is there any culpability on the part of the government and its employees for failing to detect the harmful effects in initial tests? Since much of the government's drug testing program is contracted to private firms, are such firms also culpable? And what of the stockholders who may lose dividends and capital gains as a result of liability and litigation costs? And what also of the company employees who had nothing to do with this drug violation but whose jobs may be jeopardized by it?

And what are the violations? Are there not both civil and criminal violations of statutory law as well as violations of federal regulations? How many different specific violations are there? The list can include such diverse things as failure to fulfill an affirmative duty to report harmful effects, failure to remove a dangerous product from the market, defrauding in sales, misrepresentation in advertising and labeling, and negligence.

Yet even these questions do not exhaust the problems that arise from the complex relationships involved in this example. In liability suits some victims clearly may also be regarded as violators. Retail firms might sue for damages and be sued for them. Or the government may be regarded both as failing to perform its testing functions and as a victim of the manufacturer's failure to report. Likewise, which violations apply to which victims and to which violators is problematic.

The illustration and the questions about what measurement status is to be accorded the units in events and to events themselves may lead us to conclude that each of the kinds of rates that we might calculate--violation, violator, victim--cannot encompass all of the set in all events. This is so for a number of reasons.

For one, whether or not there is a victim in an event is problematic, and in many white-collar law violations there will be multiple kinds of victims and an indeterminate number of the same kind of victim.

Second, there probably is no way to define a victim that would cut across all kinds of events, and where an appropriate base could be found. A different base might be required for governments as victims, other kinds of organizations as victims, and persons as victims.

Third, for some kinds of events the consequences may be a more significant element to measure than the numbers of violations, victims, or violators.

Fourth, events are not easily bounded in duration and space. How, then, shall one bound the definition of events, and their violations, victims, and violators, so that counts may be made?

Fifth, implicit in much conceptualization and measurement is the question of whether seriousness shall enter (a) as an element in selecting and defining a particular measure, (b) as a criterion in bounding a measure, and (c) in determining choices about which violations are to be taken as measures of white-collar violation, either singly or in some index. A determination of the seriousness of an event is related to the way that the perceived and actual consequences of events are regarded as harmful. The incorporation of seriousness into a measure of violation relates also to who is to be regarded as a victim. Whether every member of an exposed population is to be regarded as victimized whether or not they experience any actual damage depends not only upon the law but also upon how one determines harms and their consequences and upon criterion for determining or ranking matters as to their seriousness. The separation of criteria regarding victims from those regarding harms is problematic, conceptually and empirically. How one decides the question of harm will determine who is to be regarded as victim. How one decides who is to be regarded as victim, independent of any criterion of the kind and amount of harm, will determine the measure of harm.

Criteria for Selecting Units and Their Selection. We have observed from time to time that most of the information on white-collar law-breaking derives from official behavior in social control agencies responsible for law enforcement matters and their disposition. The units that define and relate to these matters derive from the way information is collected and processed in these agencies and stored in their information systems. Our selection of units for the conceptualization, counting, and reporting of white-collar law-breaking takes cognizance of the ways these organizations affect information, keeping in mind their utility for both research inquiry and social reporting.

We shall begin by considering units that relate to the processing of matters in a law enforcement or compliance system.

Following the paradigm set forth in Chapter II, our first units of count in a processing system would be mobilizations. As we noted, broadly speaking there are two

main classes of mobilizations, proactive and reactive, designating the source of the mobilization and the organizational response.

Unfortunately, agencies vary in the extent to which they acquire information on types of mobilizations, but we may think of at least several major kinds of units that provide information for each type of mobilization.

FIGURE 6.1

AGENCY SOURCES OF INFORMATION BY TYPE OF MOBILIZATION

Proactive Mobilizations	Reactive Mobilizations
Accounting Audits	Complaints
Agent Field Inspections	Self Reports of Compliance and Noncompliance
Continuous Monitoring	Referral from Other Agencies
Records Investigations	

For the next stage of the process, we are interested in the agency's response to these mobilizations, particularly whether or not it is germane to the agency's mandate and, if so, the violation status of the events. The basic unit created at this point is some version of a case and the early agency response to that case. The kinds of counts that are germane at this point are:

Matter Disposed of by:

Referral to Agency
De Minimus Matter
Not a Bona Fide Matter
Violation Status Determined
Investigation to Determine Violation Status

Most agencies could categorize their initial or input responses to mobilizations in this elementary classification scheme, though there are problems of distinguishing the determination of a violation from its investigation status and of relating that determination to referral to other agencies. These counts are important not only because they provide some description of the processing system, but also because they provide information for calculating base rates.

There are many ambiguities in agency labels and the use of the same or similar terms does not necessarily mean the labels are comparable in their scope or even in their content. A good example of these ambiguities is provided by the terms "referral" and "investigation." The term "referral" can signify both internal and external referents. The IRS, for example, uses the term "referral" to designate matters that are referred to the Criminal Division of IRS for investigation (an internal referent), and they also use it to signify a transfer of the investigation to the Tax Division of the U.S. Department of Justice (an external referent). At the same time, the IRS opens an "investigation" only after certain internal examination procedures have been undertaken (e.g., an audit), whereas the SEC opens an investigation as a response to mobilizations. To treat these two definitions of "investigation" as comparable probably would be mistaken. What constitutes an investigation for any agency will depend upon definitions of what activities are defined as "investigative." The more that investigative activity is circumscribed by legal consequences, the more likely an agency is to introduce it at a late rather than early stage of internal processing. Thus an agency is under legal obligations to notify persons of their "investigation status" in seeking information from them, if the agency intends to determine whether there has been a criminal violation of law. And it follows, of course, that whether an agency has such powers of investigation will determine its choice of labels.

There are substantial problems also in counting agency matters, since they remain in a given state for varying periods of time. For that reason, there is a strong tendency for agencies to report the time status of such matters, that is, the number of investigations opened and closed during a given year. A more satisfactory measure, however, would appear to be the duration state statistic for all matters within an agency, that is, the number disposed of within a given distribution of time.

The third major stage of processing is the determination of the violation status of all events. We regard it as worthwhile to develop classification schemes for the major units in law-breaking. These units are Events, Violations, Victims, and Violators.

Recognizing that much current information derives from legal categories of violation and legal properties of events, we have developed two closely related classification schemes for grouping white-collar violations of law. At this point we shall make no attempt to define categories in detail, but it is assumed that the basic unit of count in these classifications is a violation.

The first classification is based on types of normative systems with their major properties providing the next-level units of count. Deceit and default are properties related to universal social and economic interaction norms. Any interaction norm proscribes forms of deceit and default; certain forms of interaction that are illegal can be classified under these major types. Fraud, false representation, adulteration, forgery, nondisclosure, impersonation, misrepresentation, evasion and similar types of law violation can be classified as forms of deceit. Some law violations will be combinations of two or more properties of interaction norms. Embezzlement, for example, represents theft by deceit, and industrial espionage may be theft by impersonation and trespass. Categorizing events in terms of these properties can lead to most legal categories by appropriate combination.

FIGURE 6.2

CLASSIFICATION OF WHITE-COLLAR VIOLATIONS BY NORMATIVE SYSTEMS

1. Universal Social and Economic Interaction Norms
 - 1.1 Deceit
Fraud, false representation, adulteration, forgery, nondisclosure, impersonation, misrepresentation, evasion
 - 1.2 Default
Contractual nonperformance, noncompliance; debt delinquency, absconding
 - 1.3 Coercion
Extortion, blackmail, illegal boycotts
 - 1.4 Theft
 - .1 Property theft: larceny, misappropriation, speculation
 - .2 Information: industrial espionage, patent, trademark and copyright infringement, plagiarism
 - 1.5 Endangering (criminal negligence)
Dangerous products, industrial safety, public safety, injurious or hazardous pollution
 - 1.6 Nuisance Creation (negative externality controls)
 - .1 Private
 - .2 Public or common
 - .3 Mixed

- 1.7 Trespass
Encroachment
- 1.8 Sabotage (malicious injury for gainful purpose)
Injuring competitors and rivals
Some unfair labor practices
Libel
Vexatious proceeding
2. Free Competitive Market Norms
 - 2.1 Illegal monopoly, price conspiracy
 - 2.2 Market manipulation
 - 2.3 "Unfair competition," low balling, dumping
3. Regulated Market Norms
 - 3.1 Licensing breaches
 - 3.2 Price control violations
 - 3.3 Illegal transactions
 - 3.4 Unfair labor practices
4. Norms of Office
 - 4.1 Corruption
Interactive: bribery, conspiracy, nepotism
Noninteractive: self-dealing, conflict of interest
 - 4.2 Misfeasance, malpractice, nonfeasance
 - 4.3 Malfeasance
5. State Duty and Fealty
 - 5.1 Tax evasion and delinquency
 - 5.2 Loyalty crimes (treason, trading with enemy, defense secrets)
 - 5.3 Political process violations (illegal lobbying, campaign finance)
 - 5.4 Non-reporting of information
 - 5.5 Miscellaneous (Malum prohibitum)

Our second attempt at classification is based upon major dimensions of normative control that enter into the classifications of violations. The dimensions derive from explanatory systems that lie outside the law. There are three broad normative dimensions:

- (1) Norms governing transactions, exchanges, or social relationships;
- (2) Norms governing the states of organizational actors or collective states;
- (3) Norms governing the social control of violating.

For each of these there is a set of normative conditions that can be violated and there are types of violations characteristic of those normative conditions. This classification is intended to encompass all major forms of law violation including those characterized as white-collar violations. The number of dimensions is rather large and the scheme's utility may be purely heuristic.

Attention also is called to the proposed revision of Title 18 of the United States Code which includes a new classification for criminal offenses. Were one to allocate matters that are only white-collar crimes and use legal categories, the code is not all that satisfactory, since it makes relatively few distinctions that would designate violations as white-collar crimes, and the term is altogether lacking in its designations of violations (perhaps appropriately so, we might add). Were one to distinguish offenses on the basis of our proposed definition, the classification could be somewhat more helpful, since many of the categories could be related to our proposed definition. The basic framework of the code may be useful in designating our four major types of law violation, provided that one seeks only a very crude measure based on legal categories.

We have noted that in a processing system, the labeling of matters as a violation is a tentative process. The organization may signal this in various ways, such as "suspect" or "alleged violator" or by "charges on arrest", as compared with "charges by information" or "charges by indictment." And even later, the charges may be "reduced" or changed by processes such as "plea bargaining" or a "pleading to" in an admission of guilt. Finally, the agency may acknowledge a "found guilty" or that there were no charges, or enter into a "consent agreement" that refers to the possibility of charges in the future. Where one enters a processing system, then, determines the distribution of labels.

FIGURE 6.3

NORMATIVE SOCIAL CONTROL DIMENSIONS OF LAW VIOLATIONS

1. NORMS GOVERNING TRANSACTION/EXCHANGES/RELATIONSHIPS	
NORMATIVE CONDITIONS	THEIR VIOLATION
<u>TRUST</u>	<u>BREACH OF TRUST</u>
<u>Public Trust</u>	<u>Breach of Public Trust</u>
	Corruptions as the use of public power or trust for private/ organizational gain
	Bribes
	Conflict of Interest
	Patronage
	Graft
	Malfeasance
	Misfeasance
	False Swearing
<u>Private Trust</u>	<u>Breach of Private Trust</u>
	<u>Malpractice</u>
	<u>Deception</u>
	Evasion of duty
	Misrepresentation
	Fraud
	Falsification
	Impersonation
	of public officer
	of private citizen
	<u>Fiduciary</u>
	Absconding
	Embezzlement

<u>Contract</u>	<u>Breach of Contract</u>
<u>CONSENT</u>	<u>Default</u>
	<u>COERCION</u>
	Violent deprivation of life, liberty or property
	Kidnapping
	Bodily harm
	Endangerment
	Reckless endangerment
	Criminal negligence
	Safety
	Pollution
	Dangerous products
	Extortion and Blackmail
	Robbery
	Trespass and intrusion
	Public Trespass and Intrusion
	Standing Traffic Violations
	Unauthorized trespass
	Private Trespass
	Property Trespass
	Libel
	<u>Conspiracy</u>
<u>PRIVATE PROPERTY</u>	<u>VIOLATION OF OWNERSHIP</u>
	<u>Deprivation of Possession</u>
	Theft
	<u>Deprivation of Use</u>
	Unlawful possession
	Illegal entry/Trespass
	Destruction of Property
	e.g., arson, aggravated destruction, etc.

INDIVIDUAL RIGHTSVIOLATIONS OF INDIVIDUAL RIGHTS

Interfering with Civil Rights

Interfering with Civil Rights
Under Color of LawInterfering with a
Federal Benefit

Unlawful Discrimination

Interfering with Constitutional
Rights in Exercise of
Civil RightsAFFIRMATIVE
DUTIESVIOLATION OF AFFIRMATIVE DUTIES

Nonfeasance

2. NORMS GOVERNING COLLECTIVE SURVIVALSURVIVAL OF:THREATS TO ITS SURVIVALCOMPETITIVE ORDERFree MarketsRestraint of Trade

Loansharking

Racketeering

Criminal monopoly

Illegal mergers

Price-fixing

Control of Outcome

Sports bribery

Labor bribery

Bribing government
contractors

Regulated
Markets

Price Control

Licensing

Labor market:
hiring, etc.

Consumer Protection

Trade,
International

Information

PUBLIC GOOD/DUTYFinance Common
WelfareObligation for
National DutyPUBLIC ORDERBreach of RegulationBlack markets, underpricing,
some illegal rebatingLicensing Breaches
Failure to obtain license
License violations

Regulation of labor

Consumer Fraud (see
also Trust, Deception),
e.g., adulteration

Customs

Smuggling
Duty evadedFailure to file or
report information
False information'FREE RIDER' VIOLATIONSViolators of InternalRevenue

Tax Evasion

Violation of Affirmative
Duties for Common GoodObligation for military
service
Jury duty
Witness DutyDISORDERNoise Disturbance
Disorderly conduct
Incitement to riot or
disorder
Traffic, moving violations

PROTECT INTEGRITY OF
MEDIA OF EXCHANGE

Currency

Documentation of
legal tender

CONSTITUTIVE ORDER MAINTENANCE

MEMBERSHIP IN SOCIETY

Privilege of Citizenship

Movement of Citizens

LEGITIMACY OF STATE
AUTHORITY

BREACH OF MEDIUM

Counterfeiting

Forgery

VIOLATIONS OF
CONSTITUTIVE ORDER
(Included here are
violations of
the constitutive
order of the
society)

VIOLATION OF
CITIZENSHIP LAWS

Hindering discovery
of Aliens
Falsification of
citizenship
Illegal immigration
Smuggling aliens
into U.S.

Interference with
movement
Registration of
aliens
Passport violations

SUBVERSIVE ACTIONS

Sedition
Treason
Loyalty oaths
Oaths of office
Incitement to riot
Engaging in riot

STATE SECRETS

ORGANIZATIONAL SECRETS

ELECTORAL PROCESSES

LAW ENFORCEMENT/
JUSTICE

Legitimacy of
Authority

Integrity of Legal
Processes

VIOLATION OF STATE
SECRETS

Unauthorized
disclosure
Espionage
Registration of
foreign agents

BREACH OF PRIVATE INFORMATION

Industrial espionage

BREACH OF PROCESSES

Election frauds
Illegal campaign
contributions
Registration of
lobbyists, etc.

VIOLATIONS OF INTEGRITY OF
LEGAL AUTHORITY PROCESSES

Interference with
Legitimate Authority
Escape or flight
from authority
Interfering with
Agents of Law
Impersonating an
officer

Obstructing Legal
Processes
Obstruction of
Justice offenses
Perjury/false
statements
Misprison of a
felony
Contempt offenses

Obstruction of
Government
Obstructing a
government function

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<u>MAINTAIN DEFENSE AGAINST ENEMIES</u>	<u>VIOLATION OF NATIONAL DEFENSE</u>
	Sabotage Inciting or aiding mutiny, insubordination, or desertion
<u>CONDUCT COLLECTIVE TRANSACTIONS</u>	<u>VIOLATIONS OF NATIONAL AFFAIRS</u>
	Attacking a foreign power Conspiracy against a foreign power Entering or recruiting for a foreign armed force (mercenary) Entering into an unlawful international transaction
3. <u>NORMS TO CONTROL VIOLATING ACTIVITIES</u>	<u>VIOLATION OF CONTROL LAWS</u>
	(These are violations only because the law is intended to control the commission of prohibited acts)
<u>Prevention of Crime Occurrences</u>	<u>Violation of Prevention Statutes</u>
	Gun control Illegal transportation Importation bans on prohibited goods Violation of a control regulation

<hr/>	
<u>Restriction of Practice or Use</u>	<u>Violation of Practice or Use</u>
	Licensing use of dangerous weapons Licensing dangerous products or other sources of harm Registration violations Practice violations
<u>Control of Possession</u>	<u>Violation of Possession of Illegal Means</u>
	Possession of stolen goods Possession of dangerous goods, e.g., narcotics, explosives Possession of unlicensed objects
<u>Control of Exchanges</u>	<u>Violation of Exchange Control</u>
	Illegal importation Sale of illegal commodities Operating illegal exchanges Illegal sales of legal goods Receiving stolen property
<hr/>	

It seems essential that one understand why and in what ways an agency treats labeling of violations as a tentative process. That in turn will aid us in interpreting the violation state information of an agency. We suggest that there are several functions of tentative labeling in violation processing systems. They affect the kind of labels one adopts and how one applies them.

One function of labels in an organization is to prevent it from making "mistakes" that come with commitment to a label. To impose labels prematurely may expose the labelers to harm. In other cases, the labels are employed because they provide considerable latitude for the agency to determine what action it will take with respect to the matters. The labels reflect only currently anticipated courses of action, but other courses are left open. An audit in IRS does not preclude a later investigation, for example. Or an inspection does not preclude a "warning," which in turn does not preclude the event becoming a "violation." We have noted this is characteristic of labeling in compliance-oriented systems. Of course, some labels arise because of the nature of the mobilization process, while others do so because of legal constraints (e.g., the necessity to prefer a charge if someone is to be subjected to denial of freedom). Our basic point is that initial labels in a system are characterized both by search behavior on the part of the organization and of its labeling agents, and an orientation toward the matter's future.

Labeling as a tentative process is characteristic of at least all formal organizations and, indeed, perhaps of all human organizations or relationships, including both achieved and ascribed statuses. Thus one has "new" and "old" friends, "greenhorns," "raw recruits," "apprentices," and "masters," and even "newborns." Such labels are intended to communicate social processes and organizational characteristics and most importantly to say something about future statuses, rather than to communicate the accomplished or final states that information processing specialists tend to treat them as.

But, in an important sense, there are no final labels for any law enforcement processing system, even where in a given instance the agency may appear to give the situation a label of finality, such as "sentenced," or "fined." That same agency may also speak of "recidivists", "failure to comply" and similar status categories, which, as noted earlier, have to do with the tentative nature of even seemingly "final labels." Even so final a label as "deceased" is not always equivalently regarded by agencies. For some agencies the category may be a beginning rather than an end, such as for one processing survivor benefits.

There, fraud may involve the determination that a deceased person is living. Indeed, even an organization may be "born again."

Classification systems, being but one form of labeling, thus face enormous problems in capturing the meanings that labels have for organizations and their use of them. At the same time the system must pay attention to the meanings that others might attach to labels quite apart from those intended. Even when such matters appear to be resolved by a logical ordering of members of a classification, the problems do not disappear in their application to an empirical realm.

Any theoretically based research will want information on additional units related to violations as violation events. In our examples we often have called attention to such additional properties of violations and events. They include elements such as duration in time, and they also include information as to where and how an event occurred or what was used to bring it about. Indeed, we suspect that such information may be more important for the description and understanding of many white-collar law violations than the legal descriptions. A few examples may illustrate our point.

Consider first the question that is commonly asked of ordinary crimes, "Where did this occur?" Such a question is almost irrelevant to many types of white-collar law violation. Where do securities frauds take place? Where did a conspiracy occur? Does a fraud involving the use of a computer take place in the "computer"? Only? Moreover, where an offense occurs may come close to being irrelevant for some purposes and highly relevant for others. Thus, the unsafe product may be unsafe when manufactured and that is important to know for its later control, but the safety violation may occur at the point of harm as well, and who gets harmed where may be important for other purposes. Or, where the air pollution exists may tell little about the source of that pollution. Yet both conditions may be states of violation--one for failure to control, the other for causing the emission. And emitters indeed may not even stay put. Where the source is automobile pollution and failure to maintain a vehicle up to standard, the places of occurrence can range over the continuous or intermittent effective range of travel for the automobile and its driver. Whether place of occurrence is a relevant piece of information, and what about it is relevant, will vary considerably, probably more for white-collar than for other types of violations.

The reference to air pollution highlights yet another problem in classifying white-collar law violations. How meaningful is the description of a class of violations for

the members of that class? White-collar classes of violation based on major legal types of violation seem far more heterogeneous than those for ordinary law violation. When one considers all forms of environmental pollution, for example, each may be a "pollution violation" in simple terms. Yet it would be mistaken to regard them as if they could be treated so in any meaningful way. Considering only air and water pollution, the previously used illustration of point source monitoring versus quality monitoring at a point in space reflects not only detection characteristics but the nature of violation.

How the violation at law takes place may be more important information than whether it belong to a member of a given class of violation. We have contended that what is characteristic of white-collar law violations is that they involve the use of a significant position of power. Hence for our purposes it not only is important that we determine what is a significant position of power, but also that we characterize different types of power positions and their use in committing violations. Among the types of power and their use that we might distinguish are the following:

1. Use of government power

1.0 use of a position of legitimate coercive authority

1.1 use of power to allocate government resources or benefits

1.2 use of government fiscal power

1.3 use of authority of office, excluding coercive power

1.4 use of information

2. Use of non-governmental organizational power

2.0 use of fiscal power

2.1 use of power over resources

2.2 use of fiduciary power

2.3 use of power over job advancement and employee achievement

2.4 use of information

3. Use of power of relationships

3.1 professional position power

Our definition similarly requires a determination of gain or consequences resulting from the use of a position of power. Some additional classification of illegal gain or consequences seems essential if we are to achieve differentiation in this criterion that is relevant to the classification of violations. We shall not attempt to create such a classification here for heuristic purposes, though we recognize it as an important task for the future. Here we simply note that both illegal gains and illegal consequences must be classified. For some forms of white-collar violations, the most important attribute may be their consequences. Even de minimus violations, as we noted earlier, may have considerable illegal consequences or gains since each individual violation may aggregate to enormous gain.

An important issue in developing classifications of gains and harms is whether there are common properties that lend themselves to a common metric. We know, for example, that one of the illegal gains of the misuse of legitimate power may be an illegal gain of power, or even illegal power. How one can treat amounts of power in any way comparable to amounts of gain in financial rewards is unclear. Moreover, how one chooses to conceive of the matter--whether of loss to victims or of gain to violators will affect the gain-consequence classification. For some white-collar law violation, there are both gains and consequences. For others, there appear to be only gains or only consequences, at least in any meaningful way. Moreover, many violations involve a gain in one dimension for violators and a loss in another for victims. Physical injury to victims may be dollar income to a manufacturer. To translate personal injury into dollar losses, given the inapplicability of a common metric of physical injury for both persons and manufacturers, the measure commonly chosen is dollar losses to both. But one can have doubts that the calculation of "physical injury cost" has anything in common with company profits other than that both are in dollars. Even when dollar values seem reasonable ways to calculate gains and consequences, what is to be measured? How does one determine the net gain or loss to an organization that pollutes its environment and to the environment? Is it the cost of compliance to the polluter, which is then only passed on to the consumer to be compared with the cost of damage to those who cannot pass on that cost?

Such problems of what is to be measured and how are particularly relevant when dealing with white-collar law violations precisely because both violators and victims often are organizations or some combination of organizations and persons. Organizations obviously have greater capacity on the average to pass on the financial cost of most things. Yet under some conditions organizations may be subject to costs that can apply only to some organizations and not to

persons or other kinds of organizations (e.g., the distribution of profits). Similarly where market shares are involved, they apply only to organizations. Yet given equal losses, marginal producers will bear the greater cost.

These difficult conceptual, measurement, and counting problems as to gains and harm consequences arise quite often in white-collar law violations. It seems premature, therefore, to attempt any classification of illegal gains or harm. But we do regard these problems as worthy of systematic investigation.

Classifying Victims and Violators. From a theoretical perspective, much is to be gained if one can isolate and classify victims and violators by analytical types. There are few major attempts to classify victims and violators of white-collar law-breaking other than in terms of their formal properties. These are general classifications of types of victims of ordinary crime (Fattah, 1967; Wolfgang, 1967), but these are not particularly useful for classifying white-collar law violations. Edelhertz advances a major criterion that differentiates white-collar from other types of victims: "[T]he true and ultimate vulnerability is the possession of an asset which can be lost" (1970:9), though he does not then develop a classification of victims based on types of assets or behavior in relation to their assets. Given how little we know about such victims, one might perhaps agree with Geis that "to reduce the victimization patterns in white-collar crime to some kind of orderly arrangement is, perhaps, a futile endeavor, defying satisfactory accomplishment" (1973:89). The main reasons for this, he argues, are that most people at one time or another are regularly and routinely deprived of their assets and that most also are unaware that they are deprived. He goes on to observe that since most persons are unaware of their status as victims, the key issue in white-collar crime is victim awareness and responsiveness to being victimized (1973:97-100). What should be made problematic about victims, he suggests, is the kind of responses they make to being victimized when they become aware of it, particularly their lack of strong reaction to having been victimized (1973:99). Geis deliberately chose to deal only with a class of victims--those of white-collar "[c]rimes incidental to and in the furtherance of business operations, but not the central purpose of the business" (1973:90). Hence he, like most others studying white-collar crime victimization, concentrated primarily upon persons as victims, rather than upon government and other formal organizations as victims of crime (though some examples refer to government and other organizations as victims). This tendency is evident not only in considering white-collar law violations, but in all other violations of law as well. Thus burglary often is mistakenly seen as a crime against persons rather than also against an organizational unit--a family, household, or

premises of the many organizations that people the social world. Indeed, crimes of robbery, of arson, of destruction of property and a host of other offenses associated with ordinary crime have organizations as their victims (Reiss, 1967; Quarantelli and Dynes, 1973).

Given how little is known about white-collar victims and violators, it seems the preferred strategy initially would be to classify them in terms of formal properties related to their formal status as persons and as organizations. As we come to know more about other properties that distinguish victims and violators, other classification schemes may be more appropriate. Our proposal for classification, moreover, focuses upon units that are common to both violations and victims, setting aside those that may be generic to a particular status as victim or violator.

Units to Count Victims and Violators

1. Organizations

1.0 Governments

1.01 Jurisdiction

Federal|State|Local

1.02 Type of Government Agency

The OMB classification of all executive department and independent regulatory commissions might be used when supplemented by the inclusion of all legislative and judicial department organizational units.

1.03 Type of Government Agency Program

The OMB Agency Program Index used in the U.S. Department of Justice White-Collar Crime Referral Manual provides a useful detailed classification of all Federal Agency Programs by agency, though it needs continuous updating. It would seem appropriate to develop a functional index of agency programs. Such an index is proposed by OMB as follows:

Formula Grant Program
 Project Grants
 Direct Payments for Specified Use
 Direct Payments with Unrestricted Use
 Direct Loans
 Guaranteed/Insured Loans
 Insurance
 Sale, Exchange, or Donation of
 Property and Goods
 Use of Property, Facilities,
 and Equipment
 Provision of Specialized Services
 Advisory Services and Counseling
 Dissemination of Technical Information
 Training
 Investigation of Complaints
 Federal Employment
 Research Contracts

There are some useful distinctions in this list. One would have reason to expect, for example, that formula Grant Programs and Direct Payments for Specified Use might involve more white-collar violations than would Research Grants, yet the classification itself lacks logical coherence.

1.1 Private Profit Making Organizations

Corporations may be classified in a number of ways. Clinard, et al. (1979:1) select what they regard as the "largest corporations." Recognizing that there are an estimated two million or so corporations in the United States, they selected the largest by procedures of selection and elimination (1979:55) that took into account size, persistence over a two-year period, and absence of significant operating circumstances during the preceding two years that might have affected their violation status. Whether such a list could be arrived at independently and match theirs exactly is questionable. But, their procedure is in any case based on only a small part of the population of corporations that violate laws. Just what is an appropriate size classification for such organizations is unclear. IRS, for example, has several different ways to classify the size of their corporation sample. But that sample is substantially different from the one maintained by the Bureau of the Census, which often uses different criteria for size, e.g.,

number of employees as well as earnings. As yet no satisfactory sampling frame or definition of corporations and their size has been developed.

1.2 Not-for-Profit Organizations

Although there are a number of attempts to develop classifications for not-for-profit organizations, none seems entirely satisfactory. The IRS has a five category system based on application for tax exemption. Various classifications exist that are based on broad functions, such as religious, philanthropic, educational, health, and so on. But their analytical use and logical coherence are both questionable. Since substantial numbers of such organizations are involved in white-collar law violations, some classification by type seems worthwhile.

2. Persons

It is unclear what are the best ways to classify persons. Among the possible units are:

Status Ascription, including race, age, and socioeconomic status
Status Achievement, including education, and income
Organizational Affiliation in Violation
Position of Power in Organization (perhaps for violators only)
Relationship of Person to Other Victims and Violators: Relational Distance

The above is offered only by way of illustration and not to provide any classification that seems worthy of adoption at this point. As for all classifications, much depends upon the use of which they will be put. This is particularly apparent once we attempt to determine what properties of organizations and persons should be considered as appropriate units for classification and counting. If our model of selection were based on organizational theory, then organizational properties and relationships among organizations would be selected to indicated white-collar violations. Categories of organizational relationships might include legal properties, such as the "third-party" status of an organization. On the other hand, if our attention focuses primarily on functions, a different scheme is in order. The same is true if our interest is in opportunities to offend or be victimized.

A cross-classification of victims and offenders within a matrix and some count of the frequency of their occurrence as well as of factors associated with particular combinations of victims and violators may be useful for both social reporting and the development of theoretical explanations of white-collar law-breaking.

We propose one other closely related way of categorizing victims and violators in terms of their level of social organization.

FIGURE 6.4

Private			Social Collectivity		Government
Person	Group	Organization	Specific community	Society "at large"	Levels and branches of government

Violations can proceed with any of these levels being the organizational locus of the culpable violator and any of them being the victim. Many combinations of these levels are also possible, both as affected victims of violations, and in the cases of collusion and concert, as violators.

Possibly the least obvious victim-violator combination is that where social collectivity is regarded as violator. Attributions of violator status to such collectivities is quite common, however. Examples are the frequent attribution to the French or Italian publics of high tolerance for and participation in tax avoidance, of the petty corruption said to be endemic among Italian and French civil servants and public acceptance of this situation, the doctrine of "collective guilt" that was applied during the Second World War, and highway speed checks showing pervasive disregard for the 55-mph limit. What is commonly termed "patterned evasion" in writings on deviation from collective norms considers the entire collectivity as violator.

Whether either of these closely related classification schemes or some other is adopted, the important point to bear in mind is that of creating a matrix of the types of victims and violators as it focuses on their relationship rather than upon victim and violator as isolated statuses in violation events.

Before leaving the matter of what units to measure and count, we again call attention to the necessity to classify both victims and violators in the same dimensions so that they can be related to one another in terms of formal properties and formal relationships. Of particular importance is the relationship of both persons and organizations in the same events as victims and violators. For some kinds of events, one would have only organizations as victims and violators, for instance. For others, organizations will commonly be the violators against persons as victims though the reverse can also be the case. For some types of violations, both individuals and organizations are commonly charged for violations, either the same or different ones, in the same event or a series of related events. In still other cases, it is difficult to determine what constitutes the event in which a given number of offenders and victims may be involved or in which there are no known victims or offenders. This is the case, for example, with violations such as environmental pollution, where states or conditions are counted as if they were events, since they are seen as outcomes of violation strategies or conditions, even though neither victims nor violators can be counted.

What should be clear is that any reference to aggregate indicators of either individual or organizational violators or victims must take into account ratios of individual to organizational violators or victims in the same or in different events, counting both individual and organizational violators or victims for some instances of events and only individuals or organizations in other instances of the same class of events.

The reporting of SEC violations by Shapiro (1979:217-223) may illustrate the problem. In a sample of 526 closed SEC investigations of potential securities violations, Shapiro (1980:219) identified 1,934 parties; of these 723 (37%) were organizations and 1,211 (63%) were individuals. For 17 percent of the cases, no individual (only organizations) was the subject of investigation, and in 5 percent of the cases only individuals (no organization) were the subject of investigation. Thus, while the modal SEC case involves both individuals and organizations, some involve only one or the other unit as violator. Any account of SEC violations based on either individuals or organizations will exclude some of the violations under investigation. Only some such concept as a "party" or

"violator" or "suspect" that could be either individual or organizational will include both classes of violator and all violation events, or of "cases," which often is the policy relevant category of event.

But the count of organizations itself can be misleading, as Shapiro's SEC data disclose; only four-fifths were corporations, with 8 percent partnerships and 13 percent sole proprietorships (1980:221). Inferences about corporate behavior thus cannot depend upon organizational counts per se. Information must be secured by type or form of organization.

Were one to attempt to develop victim statistics to relate to those of violation, one would be faced similarly with the fact that both organizations and individuals can be victims. Moreover, not all violations generate victims. Among the SEC cases investigated by Shapiro, about one-third had no reportable victim (1979:275). Among cases that generate no clearly identifiable victim (if we exclude the government agency as eligible for the victim category) are those involving technical violations, e.g., failure to file a report, or violations of registration.

Similarly, it is axiomatic that particular cases or events may include a relatively large number of different violations. Again, examining SEC investigations, it is uncommon to have a single violation for a given case; most are multiple violations. While such violations are patterned, they are not always closely related. The victim and violator parties can be the same or different ones for each of the multiple violations in an event.

Classifying Agency Actions

The fourth major stage in the processing of violations relates to the ways that organizations dispose of matters. Among the actions that they may take, one of the more important for purposes of classification is that of sanctions. Closely related to the classification of sanctioning units is that of their consequences. There are, of course, many other types of units that are related to the disposition of matters. Whether or not sanctions are actually implemented is an important component of any disposition system.

There are few attempts to classify sanctions used to dispose of white-collar law violations. The most ambitious and exhaustive classification is that of Clinard and his collaborators (1979). In all likelihood it will serve as the basis for any further work in the development of a scheme for classifying sanctions for white-collar law breaking.

The classification has some built-in limitations that restrict its utility for classifying all white-collar law violations. These restrictions and the omissions they create must be dealt with in an expanded scheme. Among those restrictions are the following.

1. The units sanctioned were limited to major corporations and their fiduciaries (officers). Some sanctions that are used against governments, other types of organizations, and persons, therefore, are absent from the list.

2. Only 24 of all the major law enforcement and regulatory agencies are the basis for developing the list of sanctions. Just how serious a deficiency this is cannot be determined short of investigating sanctions for all omitted organizations and their officers. Even where an agency is included, it is not clear that all of its available sanctions were utilized and taken into account.

3. Limiting the organizations to those that remained in business for the two-year period may have had the effect of giving less attention to sanctions that incapacitate organizations and persons. Some of these organizational forms of incapacitation are treated under "cease and desist" orders, but most, unfortunately, fall under "orders not elsewhere classified" or under "unspecified" or "others." Some, such as "disbarment", are absent.

4. The absence of persons who are not seen in their officer roles restricts the nonmonetary types of sanctions against persons. One notes the absence of sanctions against licensed professionals, for example, such as disbarment, or against persons who commit homicide for the organization, such as capital punishment.

The detailed coding scheme of Clinard, et al., is based upon five major types of sanctions (monetary penalties against corporations and their officers; nonmonetary penalties against officers, orders, actions enjoined, and warnings) and two residual classes of "other sanctions" and "unspecified detail" (1979:110-113). These appear to be quite useful broad groupings and it is only the next level of detail that creates problems if the scheme is to be applied more generally. One problem is that the agency source of sanctions is merged with the type of sanction. Unilateral Orders, for instance, includes the following categories: Order Setting Aside Union Election (NLRB) and Order to Clear Employee Records (NLRB). It does not seem that "Orders" need be agency specific in the sense of NLRB or the detail of "setting aside a union election," since the

latter makes the category, in effect, useful only for the NLRB and any subsequent court actions pertaining to union elections. Similarly, there seems to be no reason to hedge the sanction of abatement with qualifications such as "Make Capital Investment to Abate Pollution," since "pollution" matters arise for only a few agencies. Moreover, insofar as possible, any sanction category should be free of a violation as well as of a sanctioning agent or a victim qualification.

Of course, it is no simple matter to develop a scheme that will classify logically all sanctions for all agencies. Nonetheless, it would be worthwhile to explore the extent to which that can be achieved with the relationships among the categories remaining logical ones. The Clinard scheme, for example, does not handle well the logical relationship between enforcement actions that can apply to both persons and organizations and to one of the parties only. Again, there is the problem that monetary penalties are seen as applicable to both persons and organizations and some nonmonetary penalties to corporation officers only. Some of the nonmonetary penalties, e.g., probationary status, however, might well apply to other organizations.

Clinard, et al., also call attention to problems of classifying violations by their penalties and to the difficulties encountered when there are multiple enforcement actions for single violations and single enforcement actions for multiple violations. Similarly, there are problems when both organizations and their officers are sanctioned for the same and for different violations in the same event. These are matters we do not propose to take up separately for sanctions. Rather they are treated in the next section where we deal with these more generic problems in counting in the context of counting events.

Issues and Problems in Counting

Problems of counting have arisen throughout our discussions of the conceptualization and classification of units of count and, prior to that, in our consideration of the collection of information and its accuracy. What remains for us to consider are some of the special problems that arise in counting different kinds of units related to white-collar law-breaking and, in some instances, to suggest ways to their resolution.

Problems in Counting Events. Among the different issues that have been raised in our discussion of counting events, four are chosen for more detailed consideration here. Two of them are related to problems of bounding events, in time and in space, and two to problems in counting more than single attributes of units--multiple and double counting.

Bounding Events in Time. The stereotypical view of violations is that they are point-in-time events. But events vary considerably in their duration. Some violations appear to be of very short duration, some episodic, and others to continue for a considerable period of time, usually until some action is taken to remove the violation. Reiss (1974:57) has called attention to the likelihood that the longer the duration of a violation in time, the more likely it is to be detected by proactive means. If we are correct in assuming that many white-collar law violations are more likely to be episodic or of continuing duration in time, they will be more susceptible to detection. Whether or not they actually are detected is another matter, since that depends very much on policies toward detection and organization to implement them. Biderman in a somewhat similar view (1980:8) observes that the point-in-time stereotype is more applicable to sudden crimes involving "accidental" encounters of offender and victim than it is to socially organized encounters. Yet the longer the duration of an event in time, the more amenable it is to social intervention of any kind, including actions to investigate or change it.

Both of these observations depend critically upon bounding events in time, since all other definitions of units conceptually and operationally related to the event depend upon its bounding in time. Who are the victims and violators and what happened in their activities depends upon such bounding.

The law, to be sure, often attempts to escape this problem of actually bounding events by defining and redefining what is the illegal behavior. What might have been a conspiracy that extended over a long period of time can be defined by the law as taking place within a more limited period, recognizing that it may have begun prior to that time. In fact, it often focuses on "a state of conspiracy" as a point-in-time event. Or, the law may conceptualize an event that is made up of different bounded events. What might have been charged as an elaborate scheme to defraud becomes simply a mail fraud--though the law may recognize a large number of specific "mailings" as separate point-in-time events. Still the law grants that such definitions change the status of violator and victim substantially, even before the law. The offender's behavior and the consequences of legal processing of it will depend very much upon how an event is bounded in time. Time dimensions of violating events, particularly of "continuing crimes," have notably direct significance in statutes of limitations.

The law may define events so as to bound their violation point quite precisely in time. Certain classes of affirmative duties are defined as point-in-time occurrences

because the law defines their violation status in time. Clearly, it is easier to detect and prove offenses where there are affirmative responsibilities. Thus, if one is required to file a form by a given date or at regular intervals, it is easy to determine compliance; if the failure to comply carries a penalty, then there is no need for proof of intent. A simple failure to comply with an affirmative responsibility is sufficient proof of violation.

It is interesting that the IRS Code often defines violations in this way. The Code (75A, 7215), for example, has a provision that any one who fails to comply with Section 7521(b) "shall in addition to any other penalties provided by law, be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than one year, together with the costs of prosecution." Section 7512 (b) provides interesting examples of the tax law defining a number of events in time.

"Any person who is required to collect, account for, and pay over any tax imposed by subtitle C or by chapter 33, if notice has been delivered to such person in accordance with subsection (a), shall collect the taxes imposed by subtitle C or chapter 33 which become collectible after delivery of such notice, shall (not later than the end of the second banking day after any amount of such taxes is collected) deposit in a separate account in a bank (as defined in section 581), and shall keep the amount of such taxes in such account until payment over to the United States. Any such account shall be designated as a special fund in trust for the United States, payable to the United States by such person as trustee."

A major problem in bounding events in time is to determine their beginning and end states. But the assumption that the events may be bounded precisely in time may in itself be faulty. Many white-collar violations seem to be characterized by indefinite beginnings or indefinite terminations, or both. This indefiniteness stems partly from the nature of the violation. Whether an event begins prior to victimization or it is the victimization which bounds its beginning and whether it is said to end when the acts of victimization end or whether it continues beyond them is more than a matter of simple solution by definition. There are other problems with the selection of origin points. At issue are concepts that are difficult to pinpoint in time, such as a "pre-mediated" motive or problems of proof, such as the sequence of activities in time with the sequence itself determining when a violation began. At what point in time, for example, did tax evasion begin if there was a failure to file a return? And does the tax violation cease at the point a return is finally filed or upon conviction of intent to defraud? Or when the

penalty is paid? To choose another example: The precise sequence in making a sale may be at issue in determining whether the sale is to be regarded as fraudulent. Similarly, how does one determine that an advertisement constituted a "bait-and-switch"? When did the "bait-and-switch" episode begin? This latter example points to another problem in determining the bounds of events: how does the point in time at which one detects an event affect its beginning and ending points? Deception can alter a beginning point by making it difficult to prove a violation occurred and legal intervention can terminate an illegal event. But not always, since where legal challenges are rejected, the activity may continue for long periods of time, ending only with a "consent decree" in which the party promises not to engage in the activity in the future.

We need to know more about how people and their organizations commit "white-collar" violations which are bounded in time before we can deal satisfactorily with the issues of stipulating beginning and end points for events. Yet, it seems that many such acts will have an indefinite starting point precisely because the acts are a consequence of a particular organized routine and in many cases there may be no motives whatsoever to commit them. The law itself may mask the starting point. Many white-collar violations at law have been violations for only a relatively short period of time; for those, at least, the origin of the practice may have been in conventional socially organized activity or activity marginal but not illegal. In some cases there was no intent to violate the law, because the violation arises out of nonfeasance--which was not intended--or because something intervened that turned the activity or lack of it into a law violation. This can be the case quite often in contract or labor law violations.

Moreover, from a sociological perspective, many events are subject to a social reconstruction of reality that will give to them starting and ending points that accord with each actor's definitions and redefinitions. Both victims and violators as well as their controllers come to construct and reconstruct their relationships in ways that define them to fit particular constructions of reality.

Not uncommonly events are defined in new and different ways as a result of critical incidents. Especially noteworthy in this connection is how the NRC redefined violations after the Three Mile Island episode. What had earlier been considered rather ordinary violations were redefined as very serious ones and they were extended in time. Whereas previously warnings may have sufficed, following Three Mile Island, severe sanctions were imposed. Two newspaper accounts suggest something about this social reconstruction.

A report in the Philadelphia Inquirer of NRC penalties (Nov. 10, 1979, p. 7B) observed that whereas Metropolitan Edison Co. of Pennsylvania had been fined only \$155,000 for violations involved in the accident at Three Mile Island, the NRC levied a \$450,000 fine against the Michigan Consumer's Power Co. for allowing two crucial control valves to stay open for 18 months. The amount of the fine was set at the maximum penalty of \$25,000 for each month of violation. Note here how the law relates penalties to the bounding of events in time and their duration; but note, also, how the penalties are higher because the NRC treated the violation as "very serious."

A report in the New York Times (April 11, 1980, p. A10) states that the NRC staff had proposed a \$100,000 fine against the manufacturer of the Three Mile Island reactor for failing to inform the government of "significant safety information" concerning the atomic power plants supplied by the company.

It should be noted that in the instances cited above--fining the power companies and the proposed fine for the builder of nuclear reactors--the amount of the fine was an unheard-of penalty prior to Three Mile Island. Nor is there any evidence that prior to that critical incident fines were levied on the basis of the length of time the event was said to have occurred.

The law, of course, is in itself a major vehicle for the social construction of reality. To the degree that the law requires bounding in time reality will be constructed to bound in time. (The valve will have been open for 18 months.) It seems that the law is more likely to insist upon beginning than upon end points for law violations, recognizing that such end points may be truncated by the implementation of the law itself, including the fact that its modes of detection and its choice of sanctions, such as cease and desist orders or other forms of injunctive relief, may do so.

A good example of the law legislating indefinite beginning and end points is in the concept of an "attempted" violation. In this connection, it is interesting to consider the specific provisions of the Federal Criminal Code (Title 18, Section 1101) where an attempt becomes an offense when "... with intent to commit a crime such person intentionally engages in conduct that constitutes a substantial step towards the commission of that crime." Note how the law includes both a relatively vague time referent in "intent to commit a crime," specifying only that it be prior to "conduct that constitutes a substantial step toward commission of that crime" and also how vague the latter is, even though it is conceptualized in rather point-in-time language--a "step."

The section further notes that it can be an affirmative defense to a prosecution for attempt if it can be demonstrated that "... under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, the defendant avoided the commission of the crime attempted by abandoning the defendant's criminal effort, and, if mere abandonment was insufficient to accomplish such avoidance, by taking affirmative steps that prevented the commission of the crime." Here one finds vague criteria for a termination of an "attempt" but with point-in-time "steps" used as criteria.

Finally, the section goes on to note that "... it cannot be a defense that it was factually or legally impossible for the actor to commit the crime, if the crime could have been committed had the circumstances been as the actor believed them to be"--leaving it then to an actor to bound the event.

Quite clearly, there are no simple ways to resolve the question of how to bound in time all white-collar law-breaking events. But one must recognize that different kinds of white-collar law violations will be bounded in time in different ways and that the bounding of events will vary with other conditions as well, such as how the events are detected, what evidence there is to support a particular violation to the point of sanctioning it, and whether the object of law enforcement is compliance or negative sanctioning. We might briefly assert the following propositions in respect to these variables:

1. The greater the linkage of penalties to the duration of events, the more likely it is the events will be bounded with definite beginning and end points;
2. Detection systems that treat continuous violations as discrete events do not attempt to bound the beginning point for the event but ordinarily treat successive points-in-time as intervals for measuring whether or not the process has continued or terminated.
3. Given the legal difficulty of establishing a pattern of continuing violation over definite periods of time, the law will opt for related point-in-time events in the prosecution of matters.
4. The more compliance-oriented the regulatory agency, the more it ignores beginning points and establishes termination points--usually by abatement or some other procedure. Many compliance agencies monitor the deviation of violations only for the time interval between the detection of the violation and the period set for abatement by compliance.

There are a number of other considerations involved in counting victims and violators that relate to how they are bounded in time. The following are offered as hypotheses:

1. Point-in-time events usually have a lower ratio of victims to violators than do ones regarded as episodic or of continuous duration--though that is not invariably the case. (Whether one treats a nuclear reactor accident that would be hazardous to literally thousands of persons as a point-in-time occurrence or one of continuous duration would have little effect on the indicator, however.)

2. The number of violators may on the average be substantially greater for point-in-time and events of short duration than for those of long duration, even where there is conspiracy. Events of long and continuous duration generally require social organization where the violators either typically are organizations or where the person can command considerable organizational resources. Where the violations are episodic, they are more likely to involve persons rather than organizations, but those persons will be linked into some ongoing organized social processes with which their victims are familiar.

3. The more white-collar law violation is of continuous duration, the less likely victims are to be aware of their victimization; hence precise counts of victims are more difficult.

4. In general, the larger the number of victims for any given violation, the less likely one is to have a precise count of their numbers.

5. The longer the duration of an event in time, the more likely it is to be regarded as a series of discrete events with different victims and violators for the discrete events.

One should not ignore the fact, however, that events vary in the extent to which they can or cannot persist in time. Their execution may require shorter or longer periods of time and their discovery may limit their duration. These properties of events must be attended to in any consideration of how events, victims and violators are to be counted.

To return to our NRC example, a valve can stay open for long periods of time. If it is a violation for it to be open, one can count it as a single event or as many, depending upon one's purposes. In the example we gave, it was tallied as 18 separate events for the purpose of setting a penalty. Clearly, behind such a conception of the duration of the event in time is the belief that it was an act that not only should not have begun but that there was

an obligation at all times to terminate it by discovery. Failing to remedy the situation constitutes separate events which are then penalized in terms of some units of time. It is hard to imagine a "failure to file" a tax return as being other than a point-in-time event, given the law (though from other perspectives it is hard to imagine that it is not simply an outcome of a long--or short--process of failing to meet a deadline).

Absent any logical way to resolve the problem of bounding violation events in time, one must recognize that any measure that would treat violations either as base units in calculating rates, or as the subject of the rate, is open to considerable inaccuracy. Because the bounding of events in time has such a substantial influence on the counting of all other units related to them, and because there is as yet no satisfactory way of resolving their bounding, one should be wary of merging events that are bounded in different ways over time. Indeed, before one treats seriously any measure related to events, one should first understand what are the rules governing their temporal bounding. This is perhaps the first and major requisite for their counting, whether the object is statistical reporting or research inquiry.

There is one other related matter that needs to be called to the attention of investigators. Where one chooses to calculate rates of violation for a particular population of potential violators and a given interval of time, one must be careful not to assume for purposes of inference that all the events began and ended in that period of time. What one has for the most part is not a count of events that relate to the activities of actors solely within the period of time, but a count of "detections" or some other measure of the violation's official status in the time period. This is important to bear in mind because if one were to allocate violations to periods of time independent of their detection, the distribution of other units, such as victims and violators, might be quite different. The same violators might appear in each period of time for violations of long duration, while the cast of victims could differ substantially--as might its numbers.

One would expect that were one to be able to compile information on duration of events, white-collar law violations subject to penalties would display a higher average duration in time than ordinary ones. There are almost no data to test this hypothesis, however. Shapiro (1980:285), after noting that she was unable to take differences in the time the SEC violations began and their episodic quality fully into account in classifying the duration of all SEC violations, shows that 79 percent of them were still ongoing at the time the SEC investigation began--thereby providing evidence for our point that most white-collar violations may be terminated by activity

related to their detection. Shapiro notes, moreover, that the longer the duration of the activity, the more likely it was to be continuing at the time the investigation began. In our terms, the more an event approaches a point-in-time occurrence model, the more likely it is to have terminated at the time of its socially-organized detection, reporting, and subsequent investigation. Finally, Shapiro's data disclose that SEC violations were on the average of fairly long duration--a mean duration of about two years (1980:285)--lending support to the general hypothesis that white-collar violations subject to penalties have a fairly long duration. We suspect that the more compliance-oriented law enforcement is, however, the shorter the average duration of white-collar law violations.

Bounding Events in Space. It has been common practice in reporting on crime to calculate victim and violator rates for different territories--ordinarily for areas of data collection such as law enforcement jurisdictions or sampling areas. Territorial bases are chosen for rates for explanatory reasons as well. Size of a place and composition of its population, for example, are thought to help to "explain" variation in crime rates. The measurement of and explanatory relevance of territory to victimization and violating is more problematic in white-collar law-breaking.

For ordinary crime rates, territorial areas are chosen because these rates are law enforcement statistics--responses to and detection of crime events are organized on a territorial base. Where sample survey victimization rates replace offense rates, comparability is no simple matter since for any given offense (event rate), the victims who are residents of or establishments located in an area may be victimized elsewhere in territorial space. This is even true for a U.S. victimization rate, since U.S. nationals may be victimized outside the U.S. and foreign nationals may be victimized within the U.S.

More importantly, for any ordinary crime, we expect it is theoretically possible to document empirically the place of occurrence of the event, the residence of the victim and that of the offender. There are special problems of course. Where the victim is an organization, the "residence" of the victim may be problematic, since the location of the corporate headquarters may be irrelevant. For some ordinary crimes, also, the place of occurrence may be somewhat ephemeral in the sense that continuing violations may occur at different places, depending upon where the offender is at the time of offending. The place of residence of the violator also may change considerably in a short period of time. This is certainly characteristic of some--though not all--"victimless" crimes. Thus, a public drunk could have been apprehended at many different places of occurrence for

the same event of drunkenness--the pub, the public green, the public highway, or at the entry to his home--places that were traversed between the time of getting drunk and that of getting home. Indeed, the crime of drunkenness does not occur officially until there is an apprehension at a site that is then treated as "a place of occurrence." We might have equal difficulty if we decided to treat these offenses in terms of the place where the original state occurred, but a drunk may visit many drinking places and the state of inebriation is not easily recorded.

In every case of ordinary crime, thus, we try to officially document a place of occurrence of all known or victim-reported events even though the scene of the crime is a moving stage. Where there are many places where a crime episode or event took place, the place of occurrence is officially reported as the place of apprehension of the offender, or the point at which the "most serious" crime occurred, since that is where or how we acquire knowledge of the event "occurring." To be sure, in some cases we may never learn of the actual location of the event, even though we can determine all other facets of its occurrence. This may be true of a rape, a homicide, or the holding of a hostage where the occurrence can be known, but the actual place of occurrence may be inaccessible if the offender is not apprehended.

Many, if not most, white-collar crimes present a quite different situation. The place of occurrence of the event, the residence of the victim, and the residence of the offending parties may have little, if any, relevance to the occurrence of the event. Indeed, there usually is no single place of occurrence for some classes of white-collar crime violations in the sense in which there is a place of occurrence for an ordinary crime. This is so either because there are many places of occurrence (e.g., an instance of consumer fraud due to false advertising), or there is no point in space to which any aspect of the violation seems germane (e.g., in criminal antitrust).

Perhaps the distinguishing characteristic of at least a very substantial subclass of white-collar crime events is the irrelevance of point-in-space measures. If this is so, then for those types of white-collar crime subnational measures will relate only to the processing of events and the residence of offenders or of victims, but not to the event itself. The detection of such events, moreover, may often be divorced from any relationship to a place of occurrence. Shapiro (1980:173) reports, for example, that an SEC examiner sitting in his barber shop may read a magazine that leads to the detection of a securities fraud. The transaction may be territorially based only in a technical sense as in illegal imports, or correlatively not so, as in mail fraud.

The place of residence of violators similarly may be largely irrelevant to offenses. This is especially the case when the violator is an organization, but it may also be so when the violator is a person. The territorial location of organizational violators in consumer fraud or in product safety on the whole is irrelevant to the commission of those violations, though it may be relevant to obtaining compliance or to penalize a violation. Whether the organization is a domestic or foreign corporation may be important for these latter matters. A person's residence ordinarily is of little relevance to the occurrence of whole classes of violations, such as communications frauds, though the more local the medium, the greater its relevance.

It similarly is a simple matter to illustrate the irrelevance of place of residence of the victim of many forms of white-collar law-breaking, particularly where the victim is an organization. The location of the government as victim ordinarily is irrelevant to its victimization.

But even in cases where the residence of victims and violators or the place of occurrence of the event may not seem determinable, spatial location may not be entirely irrelevant for explaining some aspects of a violation's occurrence, its detection, or its legal processing.

The absence of knowledge of the place of residence of victims, for example, may be a powerful factor in explaining the occurrence of some forms of law violation. That violators have no knowledge of their potential victims' residence may be the most important element in explaining their violation. The impersonality of markets, for example, makes them particularly vulnerable to fraud, for, among other things, one may never learn directly of any of the consequences of one's acts. Similarly, the absence of the relevance of the place of residence of the offender may be important in explaining very high rates of victimization, for where it is necessary for offenders to have direct contact with their victims, ordinarily the rates must be much lower. In the limiting cases, where an entire population is victimized, place is both highly relevant and highly irrelevant in this sense.

Although there are important exceptions, as Shapiro's earlier illustration suggests, place of occurrence of illegal events is usually very important to their detection. Where events have no fixed locations in space, they cannot be easily detected by their occurrence, whereas the capacity to fix them in space facilitates their discovery. Compliance systems, in fact, are more likely to be linked to detection systems where the place of occurrence is relatively fixed and determinable. One can, for example, fix the place of occurrence of certain kinds of pollution and not others. Inspection systems, as we noted earlier,

depend upon relatively fixed places of occurrence. Where the existence of a violation can be detected but the offender's location is relatively indeterminate from that evidence, the matter of linking violator to violation is more problematic. The issues of evidence are most simplified when violator and violation are fixed in space and time.

Similarly, we can show that place of occurrence is relevant to the legal processing of matters as violations. Federal jurisdiction arises, in part, because of the complication of linking victims, violators, and events to particular locations where jurisdiction is clear and the parties can be assembled for appropriate legal processes. Such matters apart, legal processing may treat victims as irrelevant in any concrete sense because of the particular legal requirements of proof. Proof of communications fraud, of truth-in-advertising or lending and a whole host of like violations divorce proof of victimization from particular victims in space.

Our examination of the problems of bounding events in space has called attention to the theoretical importance of whether or not units related to violations can indeed be so bounded. Although definite spatial location is in some instances relevant to the determination of risk of victimization and of opportunities for violating, in other instances its indefiniteness can be the important element in affecting risk. Indeed, one of the significant things about white-collar law-breaking is that one is not immune from many risks of victimization or restricted at all in one's opportunities to offend by one's location in space. For some violations, any and every location is an opportunity and a risk, and for others matters are location specific. But white-collar more than ordinary crime seems divorced from spatial determinants. Where much ordinary crime may be "street crime" or at least involve "location proneness," white-collar law-breaking breaks the bounds of space and creates situations where there is no place to hide nor any inaccessibility to victimization.

Multiple Counts of Events. It is commonplace that in all forms of law violations, an event may involve multiple statutory violations or, in the jargon of criminal prosecutors, "multiple counts" or charges. To deal with the units of violation as separate legal charges divorces them from their relational context and makes it difficult to treat them analytically as part of the "same occurrence." More importantly, for purposes of social reporting and for analytical studies, the practice links explanation to legal events rather than to their behavioral occurrence. Treating charges as the units has even more serious consequences for analyses than this, however, just as counts of victimizations rather than of incidents have for the

explanation of victimization or the determination of risks. For, if one assigns the same explanatory variables for victim and violator to all of the charges involved in an occurrence, one has created an explanatory system divorced from behaving units, such as persons and organizations. For these reasons, it has always seemed important to establish some counting rules that give priority to some particular charge among a set of charges or to develop more general categories of charges that describe the event. Each of these considerations is briefly considered below.

The most common way of assigning priority to charges is in terms of the seriousness of an event. This indeed was one of the procedures followed by Clinard and his collaborators when they chose a firm's "case of violation" as the unit of analysis (1979:65) and where multiple violations were coded in terms of the most serious violation in the "primary" field. They recognized the difficulty of establishing the seriousness of a violation, noting, as have others, that one can measure seriousness in terms of actual harm consequences or in terms of perceived heinousness. They opted finally for a classification of seriousness where serious, moderate, and minor violations were based on the following criteria (1979:76-77):

- "(1) Repetition of the same violation by the same corporation.
- "(2) Knowledge that the action involved violation of law (intent).
- "(3) Extent of the violation (that is, whether it occurred company-wide or involved only a limited number of facilities, especially in cases of discrimination and other unfair labor practices).
- "(4) Violation involved large amounts of monetary losses to consumers, competitors, or government.
- "(5) Unsafe products were being manufactured in large amounts and involved multiple products and were actually reaching the consumer.
- "(6) Violation affected the economic well-being of the employee(s) or consumers.
- "(7) Corporation refused to reinstate or rehire employee(s), recall defective products, or honor agreements, threatened witnesses or employees.
- "(8) Length of time the violation took place."

Setting aside the fact that this particular classification is largely relevant to corporations as actors and to the particular kinds of violations treated in their study, it is not clear how the judges they used could employ these criteria to classify events into three groups. Moreover, there is overlap in dimensions, and some are applicable to only some kinds of corporations and violations. It would seem to us that as yet there is no satisfactory procedure to develop measures of seriousness based on actual harm consequences. Classifications based on perceptions or evaluations of seriousness are of two types. One such rating procedure, initially followed by Clinard and his co-workers, was to have each agency furnish information on how seriously it officially (or unofficially) regarded different types of violations. It was found, however, that not all agencies had (or could furnish) information on internal criteria for rating matters as serious. Moreover, one can be fairly sure that the ranking procedures in any case would suffer severely from a lack of standardization across agencies. The practice of securing information on seriousness from organizational procedures of evaluating events or from persons in authority in those organizations has serious methodological problems as well--problems that require empirical investigation before one can determine the utility of the measures. The second major rating procedure had the public or selected publics rank the seriousness of violations in an opinion survey. Public rating procedures of the seriousness of events, such as that developed by Wolfgang and his associates, do not provide sufficient detail on kinds of white-collar law violations to rank them as to their seriousness, and are flawed in terms of errors deriving from the rating procedure. In any case, such classifications of seriousness ultimately suffer not only from the problems associated with measurement in all rating procedures, but also for those related to general classifications as well.

It is possible to rank the seriousness of some forms of white-collar law violation in terms of the severity of penalties, but, as we have noted before, not all violations are subject to penalties and there is no common scale for ranking severity.

Apart from the problems stemming from ranking violations in terms of their primacy in order to classify events, there is the issue of how many of the same kind of events to count. Clinard and his co-workers decided to count up to five violations of the same kind (1979:78). Their criterion here was whether each of the "violations" could have resulted in a separate enforcement action. Using this criterion, however, an upper limit of five can be justified only on pragmatic grounds of counting, and it is not entirely clear that the criterion of "enforcement action" can be operationalized satisfactorily in all cases.

In some cases, as we noted for NRC violations, this rule involves counting each month as a separate violation because the penalties are linked to the duration of an event. One should be aware also that this procedure for counting, as used by Clinard, employs criteria that overlap with those of determining seriousness. The number of violations counted will be affected by at least four of their eight seriousness criteria--repetition of the same violation (1); extent of the violation (2); the manufacture of unsafe products in large amounts and involving multiple products (5); and length of time the violation took place (8).

We noted that an alternative procedure to coding violation events in terms of some single criterion such as seriousness is to develop classifications that handle different kinds of charges. That, as we noted earlier, presents a problem of deriving categories which will avoid multiple counting. We doubt whether such classifications can take the complexity of multiple occurrences in the same situation or event into account. One solution that has not been pursued is to select a small number of elements for classifying multiple charges in events and to classify them in terms of selected dimensions, such as whether they involved coercion, physical harm, monetary loss, and so on. There would have to be only a few such elements, however, since a sizable frequency of dimensions can quickly lead to an inordinately large number of combinations of charges.

We noted at the outset of this discussion that the problem of multiple counts plagues all of crime reporting and the analytical work based on it. The pioneering efforts of Sutherland and more recently of Clinard to devise counting rules for white-collar law-breaking are as yet not sufficient to warrant their adoption for counting all law-violations, even those for corporations as violators. Work is required both on devising alternative measures of seriousness for classifying events and on finding alternatives to seriousness as a measure. At the same time, we need to know much more about how pervasive the problem of multiple-counts is in white-collar law violations and the relationship of multiple charges to the behavior of both victims and violators under the law.

Double Counting of Events. Closely related, but separate from the problems of multiple counts, is double counting. Double counting arises when the same event or violation (or charge) is counted more than once as a separate matter because it is recorded in more than one information system or because it is recorded more than once in the same information system. The problem is a serious matter where one is attempting to estimate incidence of white-collar law-breaking, since it can seriously overestimate the occurrences of events. The problem may seem of importance only in statistical reporting of white-

collar law violations. But it can be equally serious in analytical investigations, inasmuch as it gives additional weight to the same explanatory and dependent measures. (We note in passing that the term "double counting" refers to "multiple counting" in the sense that the same event can be counted "n" times whereas "multiple counts" refers to the same violation counted more than once because it is disaggregated into separate violations, each of which is counted. The latter procedure does not lead to an overestimation of violations unless it is taken as equivalent to a measure of occurrences--a phenomenon whose operationalization is in itself problematic.)

There is one major source of double counting and that is the multiplicity of systems for detecting, recording, and reporting the same law violation. By the same law violation we mean the same occurrence in time and space insofar as it is phenomenologically the same occurrence.

The same violation, for example, could be counted in a federal and state jurisdiction and even locally. It could be counted as a civil, criminal, and administrative rule violation. And it could be counted by more than a single agency, such as by an executive bureau and an independent regulatory agency or by an enforcement agency and the personnel service, or more than once by the same agency.

It is easy to see how this problem of double counting could be resolved administratively. But in practice it seems almost intractable, given the current organization of our information systems. There are a number of reasons why this is so.

For one, when the same matter is handled more than once in a processing system it is more than a simple matter of administrative organization to track it. The same matter can undergo legitimate transformations in its classification and thus be difficult to detect as a duplication. An agency might report it several times under different classifications, referring it to the FBI for investigation, which in turn refers it to a U.S. prosecutor, who finally may file on it and secure a court determination. In each case, the "same case" may bear a new label. Thus, the problem of multiple labeling of the same events complicates enormously the problem of tracking them. Only a centrally organized input-output system of information processing can track such matters reasonably well; some unique form of identification is essential.

Assigning unique identifications to matters within an agency is subject to error and it is subject to even greater error when each agency tries to track the same cases. Unless we can develop case flow systems of information, we shall have serious problems of double

counting, and even if we do develop such tracking systems, the issue of transforming classifications will not go away. Moreover, while from time to time we can estimate the extent of double counting between any two or more information systems by tracking sample cases, there are serious problems and costs attendant upon such procedures.

The problem of controlling double counting also is not easily resolved because what is treated as problematic about the same matter may vary sufficiently from agency to agency so that one cannot determine whether the same or different matters are being handled. The same set of circumstances can be both a violation of a health code and of mine safety. Or it can be an election fraud and official corruption. Only some rules of counting and classification can resolve such problems.

To complicate the matter still further, the processing of the same events can itself give rise to separate charges. The discovery of a violation can lead to various kinds of failure in compliance, e.g., failure to correct the original violation, to obey a court order to correct it, and to obstruct justice in resolving the matter. The three may be closely related, yet are in some sense clearly separate violations though they all derive in some sense solely from an original or primary violation. This kind of matter can be handled reasonably well, however, by separating such procedural violations of the enforcement systems from other forms of violation.

Where the problem of double counting becomes especially murky is when the same organization commits the same violation in all jurisdictions and it is counted as a violation in each because there were victims in each of the jurisdictions. These cases are particularly difficult to separate and indeed one may not wish to do so, particularly where there are multiple occurrences of the same activity.

Another problem arises in this connection--whether one wishes to count each of the violators participation in a common event as constituting a separate violation. In a price-fixing conspiracy or an election fraud, multiple persons and organizations may be violators. Where one is counting individual rates of offending, one may wish to count each person's involvement as a separate violation--as was the case in the Clinard study (1979:65), but it seems mistaken to do so where one is counting the incidence of events for other bases.

Finally, to mention but one other source of recalcitrance of information processing systems and their sponsoring organizations, there are clear barriers to the sharing of information across legally separate and functionally autonomous agencies. Some of these are legal,

as in statutory barriers to disclosure, while others are organizational, such as the scale of an information system necessary to track duplication of cases or to maintain unique identifications for persons and organizations. The problem of maintaining unique identifications for organizations is especially intractable given their sometimes chameleon-like character.

Separating the Status of Violators from the Characterization of the Violation. One of the rationales for our proposed definition of white-collar law-breaking was that we sought to separate the definition of a violation from the status of the violator. That is, we did not wish to identify the violator by reference to his occupational or social status, but rather by whether or not the violator used a position of legitimate power.

Procedurally this seems quite possible if we can secure information independent of the law enforcement processing systems, or if we can secure sufficient information from such systems to classify violators by our criteria. Still we cannot control the collection and classification of information all that well, given the way that legal processing systems are organized to define matters. We expect that they pay attention to the "collars" or status of the persons with whom they deal and sometimes bring legal charges accordingly, but the extent to which they do so is at issue. What may be treated as common theft for an ordinary working class or low status person may easily become a fraud for a middle status individual--solely due to official discretion. The problem may be especially acute where the violator is directly apprehended by the persons who have responsibility for classificatory actions, such as agents in the course of taking law enforcement actions or deciding dispositions. Judges, for example, may be most sensitive to status criteria at the point of sentencing.

We call attention to this problem because it especially affects how matters are classified and counted. Elsewhere Katz (1979) observes that what distinguishes white-collar from other offenders is the color of the collar of their law enforcement officers. This distinction may be of some use in alerting us to considerations of status in dealing with violative matters. White-collar law enforcement agents may be more likely to regard violators in terms of their status. Yet we suspect that the color of the collar of the agent also affects the extent to which there is direct contact between the agents and the violators. We would guess that most white-collar law-breaking involves relatively little direct contact, so that agents have perceptions of the status of the violators. Most ordinary known crime violators probably have direct contact with the police. It would be interesting to know just what information agents of

various kinds acquire on the status of violators, how they acquire it, and of whether and how it then is taken into account in deciding matters.

But there is another matter in which the status of the violator can affect classification and counting. The higher the status of persons or organizations and the more power they command, the more likely they are to mobilize a defense that affects their classification as violators. In this sense, white-collar law violators clearly have more control over what is classified and counted. Their position of power includes the power to control detection and the nature of evidence, as noted earlier. Their position to buy power can affect the nature of evidence. The perceptions that agents have of violators and their violations also can affect classification and counts in official information systems.

All things considered, perhaps the higher the status of the legal processing agent, the more will the status of the violator be taken into account in classifying and disposing of the violation. Thus judges will be most sensitive to those considerations and detection agents the least sensitive. Correlatively, the more the status of the violator is equivalent to the status of the agent, the more responsive to matters of status will the agent be in exercising discretion. Such speculations require testing, of course. Ideally, we should like to know how degrees of contact affect evaluations of agents and violators and how these in turn affect their discretionary judgments. This means that we are interested not only in the evaluations of status of violators by agents in a justice system but also how these agents evaluate one another's status. The status of a defense lawyer or prosecutor for an ordinary crime may be vastly different from that for at least some white-collar law violations. For both white-collar and organized crime the "big case" can draw lawyers of high status from prestigious law firms to legal proceedings. Just how much decisions in such cases are attributable to the status of the professionals as contrasted with the status of their clients is an open question.

Problems in Counting Violators

A number of matters in counting violators were discussed in our treatment of the counting of events. Here we address a few issues relating to who is to be counted as a violator and take up some problems in counting special types of violators.

Qualifications for Violator Status. What qualifies units for counting as violators depends upon whether one adopts an actor-based classification in which the violators must personally commit violations. By contrast, persons can

be considered surrogate actors for organizations, and organizations may be surrogates for still other kinds of violators such as environments. We shall begin by offering a classification of violators to raise some issues regarding counts of violators.

Types of Violators:

1. Person Based Violators

- 1.1 Persons
- 1.2 Groups
- 1.3 Informal Organizations
- 1.4 Formal Organizations
- 1.5 Government

2. Environments in States of Violation

- 2.1 Harmful natural environments
- 2.2 Manmade harmful environments

3. Objects in States of Violation

- 3.1 Products
- 3.2 Facilities

4. Communications in States of Violation

- 4.1 Communication content
- 4.2 Communication media
- 4.3 Communication means

5. Animals as Violators

6. Accessories

It perhaps is apparent that some of these types of violators are more likely to be linked with what we think of as white-collar rather than with ordinary violations. Others, animals, for example, cannot be linked to positions of power per se. Below we consider some problems relating to defining and counting different classes of violators.

Counting Organizations as Violators. There is no uniform definition for an organization to which one may have recourse for counting organizations as violators or for defining a potential or actual population of violators. This is so because organizations may vary in their legal status, e.g., their tax status as profit-making, charitable and philanthropic organizations, or correlatively in terms of their corporate charter. What for legal purposes is a single organization may consist of many different organizations that formerly were legally separate or that had distinct independent forms of organization (e.g., they

manufacture very different kinds of products). Just how we might want to classify organizations to develop a system of organizational indicators of white-collar crime is unclear and a matter that requires further inquiry.

Meanwhile, we might examine one type of organization--the corporation or profit-making organization--to illustrate some problems in counting. The recent study by Clinard *et al.* (1979) shows some of the problems of defining a corporation and selecting a sample from a universe of organizations.

Clinard begins with a definition of a corporation as a legal personality, noting that most large corporations today are conglomerates--organizations made up through mergers or development of many subsidiaries with a diverse set of product lines (1979:2). Clearly, the conglomerate is a relatively recent emergent among organizations and any conglomerate can change considerably the mix among its subsidiaries in a relatively short period of time. With such a changing mix and substantial quick change in structural form, any indicator series will by definition, composition, and count be based on a spongy set of organizations. Comparisons over time will run the risk of referring to different units for which counts are made. The number of units that qualify for a given class of organizations may similarly be elastic.

The Clinard, *et al.*, study also illustrates the problem of defining which, if any, organizations of a given kind shall enter into the count of violators. Their decision was to include only "... the largest U.S. publicly owned manufacturing, wholesale and retail corporations" (1979:54). But even that definition was beset with problems of operationalization since there was considerable variability in numbers in a relatively short period of time: 38 parent corporations were dropped from their sample on the grounds that they were not publicly held U.S. corporations for the two-year period during which they chose to study violations. Moreover, they could not obtain data on even some large corporations and/or their subsidiaries. Indeed, they estimated that their large corporations controlled some 9,000 wholly-owned American subsidiaries (1979:55). Using arbitrary rules of annual sales of subsidiaries, the two-year limit on stability of composition, publicly held stock in a U.S. corporation, and limitation to certain industrial mixes or main product lines, they finally selected 582 parent corporations and 101 of their largest wholly-owned American subsidiaries. Behind such definitions lie some conceptions of "largeness," corporate charters, domestic units, and other criteria that do not permit one to discern clearcut rules that would allow retention of the same criteria over time. What would be the same set of corporations, for example, in the next two years? Are sales

a good criterion for selecting subsidiaries? Is the criterion of "wholly-owned subsidiary" germane to the violations of a corporation? Or might some wholly-owned American corporations commit a substantial proportion of their business and violations outside the United States?

There are, of course, no simple answers to these questions, but they serve to document some of the problems in defining organizational actors among whom some may qualify as violators, and in selecting a base population for which rates are to be calculated. Does one bias the rate in a particular way by selecting only "the largest," as Clinard and his co-workers did for their calculation of rates? There is some evidence that marginal organizations may have higher (or lower) rates of violation. If so, limiting the sample to only large organizations may bias inferences about the prevalence of violators and their rates of violation.

In operationalizing the concept of an organization and determining violator status one will have to cope with some of the following general questions: (1) How does one define an organization independent of its status as violator? (2) What is the appropriate base for calculating violation rates for organizations? (3) How does one deal with large short-term fluctuations in the size of a population of organizations? (4) How does one deal with the fact that laws with respect to organizational violations change at a much greater rate than do laws with respect to individual members of a population (except in their roles as members of organizations)? Clearly the larger the number of laws and law enforcement agencies, the greater the potential for violating. The implications for statistical series are considerable.

By selecting only the largest and most prestigious organizations as potential violators, Clinard (1979) creates problems for calculating base rates and counting violators. Clearly such a choice can lead to false inferences about offending by large capitalist organizations, i.e., those that distribute their profits or invest them as capital gains. But what of other large organizations, such as not-for-profit organizations or the government itself? How are they to be compared as violators with large capital organizations? Surely the Federal government is by any standard of a "single organization" the single largest violator. But are HEW, Treasury, or other executive or regulatory units to be treated as "comparable" violators? Are large religious or not-for-profit organizations to be ignored because they do not meet all of the criteria of a corporation, e.g., the Church of Scientology, Synanon, the Unification Church, or any of the "established" churches? Are they to be handled differently as potential violators in counting? Is the government's testing of nuclear weaponry

to be dealt with as different from pollution by private industry because the government is largely exempt from NRC regulation?

Clinard found that 40 percent of the large corporations and their subsidiaries he selected reported no violations, after records of 24 regulatory agencies were included to define the organization as a violator. Assuming, for the sake of illustration, the rate is reliable, one problem is how to interpret it, given its size. Is the rate low or high, and relative to what? To other organizations of different kinds? Comparison with other types of organizations and with organizations of different size at least provides an opportunity to determine comparable definitions of organizations and of counts of their violator status, as well as to interpret differences in both prevalence and incidence rates. Incidentally, the limiting of number of violations to a maximum, such as five infractions per case (Clinard, 1979), affects any measure of incidence, including both aggregate and individual organization rates of offending.

Foreign Nationals as Violators. One of the minor problems that impinges on a count of organizations as violators is whether one includes foreign corporations violating U.S. laws as violators and whether one counts the violations of U.S. domestic corporations in foreign nations as violations that qualify them for violator status. If for no other reason than logistical problems, the foreign violations of domestic corporations need be excluded from defining violator status of organizations. But it is not clear that one would not want to investigate the nature and rates of violation for foreign corporations doing business in a country. One would expect that such rates would differ substantially in kind and amount, owing to both structural and functional organization of those corporations.

Offending by Members of Organizations. There are distinct problems regarding how to count violations of members of organizations against the organization and on behalf of it. Studies of employee theft disclose that there are two types. One is employee theft or illegal conversion of the property of an organization, such as in the use of company property for personal gain (e.g., use of the company computer for personal profit). The second is defrauding the organization of the services of oneself or others--an exploitation of the organization in terms of the work due it. In both cases, one is using a position in the organization to accomplish the theft or deception. We would not treat most instances of such offending as fitting our definition of white-collar law-breaking, since they may not involve any particular use of a position of power in the organization.

There is a third kind of employee violation that we have defined as white-collar law-breaking. It occurs when an employee uses a position of power to commit an act for illegal personal or organizational gain.

There is a special subclass of this general category that requires special attention. It involves individuals who offend on behalf of the organization but under expectations from officers of the organization or coercion from them. Offending, in fact, may come to be defined as part of the job--what one is required to do in the course of work. This can be a dilemma for members of an organization, as when accountants or lawyers--the fiduciaries of an organization--are expected to "cover" for it and do so. But it does not appear to be an uncommon feature of organizational roles that members are expected to carry out illegal activities. Thus, when the organization regularly pollutes the environment, its employees may be doing so because that is what they are told to do. Some persons may be hired to perform such acts on a regular basis, others will do so routinely, and others only occasionally. Some will experience conscious conflict, others will not (Biderman and Drury, 1975). The Department of Labor's 1977 Quality of Employment survey found that 23 percent of workers surveyed had to do something as part of their job that they said was against their conscience.

Just how much crime is to be attributed to organizational pressures to perform illegal acts is unclear. Nor do we know how much arises from employees controlling their work situation, despite management objectives. Nor do we know how much is due to the impossibility to meet management's objectives without law violation. Nor how much is done under instruction by management. Though our examples are not necessarily common occurrences, consider the following cases of violation and how the organization affects the definition of violators in different ways.

Case 1. Workers typically don't want to do any more work than necessary and tend to restrict output in the organization. The organization accepts this in its negotiations with workers and in supervision of their work. Workers, moreover, may be given to cutting corners (i.e., doing things that are illegal) to get a job done. The often-cited example of aircraft workers in WWII using a tap to align bolts of aircraft--an illegal act--is an illustration (Bensman and Genven, 1963). Such acts, though, often are tacitly accepted or encouraged by managers. But they also may not be. A recent expose, for example, reported that construction workers threatened NRC inspectors who refused to accept the faulty concrete the workers had been pouring at nuclear facilities.

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Case 2. Workers often carry out illegal acts under direct or indirect pressure from other persons--usually superior officers--in the organization, but the hierarchy is assigned no responsibility for the illegal behavior. Historically, military organization seems particularly susceptible to illegal activity where the command structure, though hierarchically assigned responsibility, escapes sanctioning for it. The number of courts martial ever brought against senior U.S. Army officers for example, is quite small; on the order of a dozen, including General Custer. The number of allegations, of course, has been far, far greater, though trials of officers of any rank are extremely infrequent. Enlisted persons, however, are frequently tried for organizational offenses. A recent case of recruiting fraud in the U.S. Army is an excellent example of this way of defining violator status in the military. While recruiting sergeants have been held responsible for fraudulence in recruiting by giving out test answers in advance, there were strong allegations that the quotas instituted by senior officers and the pressure they applied to underlings to either meet these quotas or to accept reassignment were the source of the fraudulence. Yet, the seniors were not considered violators. In a comparable private corporation case they might have been held responsible because of their affirmative duties.

The case might be viewed in the context of introducing a market solution into a formerly nonmarket area. Under advice of economists, the U.S. military moved from a compulsory selective service model to a market model of a volunteer army. Not only was the supply to be increased by offering competitive market advantages of skill, income, and possible early retirement, but the recruiting officers' pay was to be based on financial incentives, that is, officers' income would go up as quotas were met or exceeded. This very incentive system, however, provides a basis for fraudulence--a basis that was absent in the selective service model where, under ordinary conditions, the supply at a given level of rejection exceeds the demand. These kinds of market shortages, with rewards for competing successfully for a short supply, are likely to lead to fraudulence, absent an audit and detection system with high sanctions for failure to comply. Even with such monitoring, more fraud will likely occur than under the compulsory selective service system.

One can look further at the above example and see that in the compulsory selective service case the major gains were nonpecuniary--for the organization, i.e., the average service man in the Air Force or Navy was more intelligent than the one in the Army. In the all-volunteer army, the gains are shifted to pecuniary gains--extra incentive pay for the recruiters who meet or exceed quotas. One matter that requires investigation is whether pecuniary gains are

more likely to lead to individual and collective fraud or other forms of illegal conduct than are nonpecuniary gains, such as status attainment. Often the two are not separated so that it will be a difficult matter to disentangle these separate effects if indeed they are altogether conceptually separate.

These examples raise substantial issues about how one defines and counts organizations as violators. Where an organization uses more subtle ways of getting its employees to commit violations, it will probably escape processing as a violator. Yet one criterion for defining and counting organizations as violators is whether they have affirmative duties for the behavior and/or whether the employees had any gain apart from the gain of the organization.

Accessories and Pawns in White-Collar Offenses. A neglected problem in white-collar offending is that of persons being accessories to and pawns in white-collar law violations. Very little is known of who becomes and how one becomes an accessory to or a pawn in a white-collar offense. It is assumed that organizations may often involve others as accessories or pawns. Recent examples of sports recruiting violations, which involve, among other things, a member school defrauding the parent organization (NCAA), disclose that individual athletes in being recruited become pawns in the organization's drive for obtaining the best athletes available. If recruited, the athletes may receive many perquisites which they likely do not report as income.

It is interesting that one can become an accessory to certain kinds of ordinary crime that have implications for white-collar violator status. A corporation, for example, may be prohibited from paying ransom for a kidnapped employee, but it may do so nonetheless in violation of the law. The organization in this case becomes an accessory. On the other hand the employee and the organization may be but pawns in a political crime involving kidnapping of an organization's executive.

We could go on to demonstrate that there are special problems in counting victims, harms, and sanctions (or other appropriate units in describing white-collar law-breaking), but by now the outlines of these major problems are fairly clear and we would add little to their illumination by doing so.

Repeat or Career Measures. There are a variety of reasons why it is critical to develop measures of repeat violation or victimization. Repeat measures are critical to the test of deterrence theories, for understanding the causes of crime, and for comprehending changes in the crime rate (Reiss, 1980). Similarly, repeat measures of

victimization are essential for understanding the relationship of victimization to citizen behavior and for developing programs of crime prevention and control.

Earlier, we noted that white-collar information systems ordinarily do not store information in a manner so as to make the calculation of repeat measures (or recidivism, in the case of violators) of white-collar law-breaking possible. Such systems would be analogous to the fingerprint, mug, licensing, and other files available for ordinary crimes. Our purpose here is to emphasize the need to develop such measures for all of our major units of victimization and violation.

A special priority in developing repeat measures is to find ways of apportioning violations in a career to different types of violation, e.g., whether the violation was by a member of an offending organization, an offending group, or solo. Such measures of career are important since they indicate the degree to which a career is made up of individual as compared with collective activities, and the intersection of such events. Measures of recidivism for organizational violators should be especially informative.

Issues and Problems in Base Rates

Raw Counts and Rates. The choice of whether one is interested in a raw count or some other statistic such as a rate depends very much upon the use one intends for the measure. Raw counts, for example, are of special value to administrators who allocate manpower and to corrections and court officials who must handle "cases." Indeed administrators of operating agencies generally are usually uninterested in raw counts for internal management and consider rates only for comparison with external units or to convince others that they meet some criterion, such as efficiency. This is not to argue the merits of such positions but only to note that they affect the generation and reporting of statistical information. As we have had occasion to observe, most federal regulatory, administrative, or judicial agency accounts of white-collar law-breaking give raw counts. The annual report of the U.S. Attorneys (1978), for example, does not include a single rate, being made up of 13 tables with raw counts of cases and one of the average number of personnel in U.S. Attorney's offices--the average, presumably, referring to the statistical mean.

Agencies can, of course, become accustomed to reporting information that is processed for the primary purpose of calculating rates, as is the case with the Uniform Crime Reporting system and its calculation of a Crime Index. But the police agencies that make up that system ordinarily report raw counts rather than rates and regard the rate

information for their community that is developed by UCR as a political instrument rather than as a useful piece of information for administration. Perhaps one reason why agencies seldom calculate rates is that they have very little sense of what would be an appropriate base for their rates, particularly one that is independent of their system of counting.

Raw counts also may be very useful for analytical investigations of white-collar law-breaking since they provide counts that can be processed statistically. Simple counts, however, are of little value unless they can be related systematically to other raw counts. Hence, the nature of the classification and cross-classification of raw counts in social reporting or information systems is of special interest to the investigator who is testing substantive theories or hypotheses.

Raw counts are of little use for the development and reporting of social indicators. Ordinarily indicators use some statistical measure that summarizes the information in the raw count. The most common of such measures is a rate--the ratio of the raw count to the count for some base population of units. Reiss (1966) observes that for social reporting the problem is "... one of deciding what kinds of rates does it make sense to calculate, given our current knowledge of the causes of crime, the situations under which crimes occur, our aims of public information, our goals in the formation of public policy to deal with crime, and our goals in the development of organizational strategies to reduce crime." Specifying these conditions and obtaining the data to calculate the different rates are major tasks unlikely to be fully satisfied in any investigation of white-collar crimes. Nonetheless, it remains the case that procedures must be developed for establishing base populations for which rates can be calculated. Such bases may be individuals, organizations, transactions, even opportunities.

Choosing the Appropriate Base. As indicated, there is no simple answer to the problem of choosing an appropriate base, since much depends upon the use to which the statistics are to be put. Matters of use aside, there still are problems attending the selection of the base. These relate to issues of what different bases for the same measure convey about a phenomenon and what distortions result from the selection of one base as contrasted with another. The choice of a base can become a political informational tactic rather than an enlightenment strategy in social reporting.

We may illustrate the problem of selecting appropriate bases by considering the case of mine safety violations. On first reflection, the appropriate base for the calculation

of mine safety violations appears to be the number of mines. Further reflection may suggest that the more appropriate base may be the number of mines in regular operation or the number inspected during some period of time. Initially we might conceive of several rates with mines as a base: (1) the rate of violations per 100 mines; (2) the rate of violation per 100 operating mines; (3) the rate of violations per 100 inspected mines (the last provided, of course, that inspections are not reactive to information regarding the existence of a violation or the likelihood of violation). Safety violations also may be related to mine ownership or to the corporation cited for violations. One might then calculate the rate of safety violations per 100 mining corporations--a rate that would be much higher than that for all mines as units at risk. Since mine safety violations put the employed population of mines at risk, one might calculate the rate of violations per 100 employed miners. But only the employees who work in mining activities are ordinarily at risk from safety violations and one may wish to calculate the rate per 100 employed miners at risk of injury. One might expect, also, that there are substantial differences for different kinds of mines, whether by type of mineral mined or by surface versus subsurface location--and one might wish to calculate subcategory rates for these as well. Each of these rates, of course, must be interpreted somewhat differently, although they all refer to safety violation rates.

Two conclusions should emerge from our didactic exercise. One is that the more closely related the base population to the causal nexus of the violation (e.g., to a specific population at risk), the more specific and particularistic the information one gains from that specific rate. This is the problem of gross and specific rate information in demographic social reporting. In the above illustration, one learns about mine safety violation rates. To the degree that mine safety violations affect the probability of injury, they can become measures of risk that an organization will be injured (per mine, for example) and that an employed miner will be injured (per mine employee, for example). This conclusion is closely related to the second one, viz., that the more specific the base for the rate, the greater the difficulty in merging it with other more general categories unless it is part of a larger classification scheme. In the above example, one might treat mines as a subset for a base of workplaces, mining corporations as a subset of corporations, mining employees as a subset of employees, and so on. With such bases mine safety violations can be merged with all other violations related to that base.

Caution should be observed in doing so, however, for the numerator of the base rate--violations in this case--ordinarily also will be changing in its meaning. One can

move from mine safety to safety violations to all violations against corporations with corporations as the base for rates. Or one can move from mine safety, to safety, to all categories of violations with employees as the base. In doing so, the movement is from rates that can be understood in their particulars to ones that are of utility only in the general case.

Finally, we use our illustration to show how shifts in definition of related units of mine safety often require shifts in the choice of a base population as well. Suppose we looked at mine safety in terms of number of actual injuries reported in a given year. We could relate safety violations to number of injuries, number of injuries per employed worker, or per mine, number of disabling injuries per injury, or per violation, and so on. (Again, however, the actual data we have involve confounding of the violations numerator with injuries as a base, since many violations are not detected or not defined independently of the occurrence of an injury.) As we shift what it is for which the population rate is being calculated, we face choices about appropriate bases and consideration of what information a rate for the same phenomenon conveys when different bases are selected for calculating the rates.

Much thought needs to be given to appropriate bases for the calculation of white-collar indicators of law enforcement construed in the general and the specific case and of how they may be related one to another. Perhaps some general rules can be developed for selecting bases for the calculation of rates for measures of white-collar law-breaking. Some special problems in the choice of bases for rates are considered below.

Bases for Stock and Flow Models. Typically, information we acquire for the same units at various times as they flow among different processing stages or different processing agents is a series of "state" or "stock" statistics at a given point in time or for a particular interval of time. Both the nature of the base and its size may shift as one moves the units through a processing system. By way of simple illustration the base can be cases handled, and the numerator of the rate the number of referrals. But if the size of the base is the number of cases handled at each particular "state level" or for each "referring agency," then the stock rates cannot be compared directly. Indeed, the referral rate can remain constant as the actual number of referrals declines--as it invariably does in any case processing system. To attribute that decline to given agencies, one must have a flow model where the base is the original population and one calculates all rates for that base. Both stock and flow statistics have their utility, but one must be careful not to undertake comparisons that are inappropriate to the base selected.

Changes in the Size of the Data Base Over Time. Long (1980) notes that the income tax provisions included in the U.S. Tariff Act of 1913 imposed a relatively low tax rate and included only a small proportion of the population. Fewer than one in 50 adult persons were required to file a return and the normal tax was only one percent of net incomes after exemptions up to \$20,000; by 1978, 95 percent of the adult population filed a tax return in the U.S. and tax rates started at 14 percent. The population of adults also has been growing from 1913 to 1978, but that can be taken into account in calculating the rate. What makes cross time comparisons problematic, however, is the growth in the size of the eligibles at the same time that there is a growth in the size of the total population. The addition of "eligible" units to a base population can substantially alter the meaning of rates over time.

Consider the case of evasion by failure to file a tax return. One can attach a particular and not misleading meaning to a failure to file a tax return rate from 1913 to 1978, using the eligible population in each year as the base, but unless the ratio of eligibles to total population is taken into account, one could make misleading interpretations about changes in the size of that rate. One might find, by disaggregation, for example, that the failure to file a tax return rate was rising for "an original group of eligibles" while the overall rate had been downward. This phenomenon might possibly be explained by the idea that the more one approaches a universal requirement for filing, the higher the rate of compliance with a filing requirement because of the increased risk of exposure to detection--assuming there is no change in proactive enforcement. That explanation is of a general behavioral type, nonspecific in its postulates with regard to the composition of the eligible population. An alternative hypothesis would be that the successive increments to the base of eligibles differ in the direction of a higher prevalence of compliant members, perhaps because they are less secure about risking noncompliance, having less to gain by evasion, or less opportunity to do so because of tax withholding from earnings. One type of hypothesis is directed at a dynamic of the numerator, the other at a dynamic of the denominator, and the two types of hypotheses are not mutually exclusive.

A way to deal with either kind of shift is to continue to report rates for the same kind "eligible" population. But that may not be a meaningful rate after a period of time, since eligibility often is tied to the tax requirements themselves.

Similarly, one can acquire important information on shifts over time by following a cohort of tax filers (a flow model), but one then must undertake cohort specific comparisons to interpret the rates. Ideally, cohort

statistics are one important type of social indicator--and perhaps the most worthwhile analytically--since they permit some control on gaining and period effects on the rate, as well as those of cohort composition.

Incidence and Prevalence Rates. Care should be exercised to insure that incidence and prevalence rates apply to appropriate bases and if comparisons are to be made that they have the same base population.

Exposed Populations and Measures of Risk. One of the more common indicators sought for reporting of law violations is some measure of exposure to harm from violations and their consequences. This means that there must be a base population that meets criteria of "exposure" or "at risk."

The typical "at risk" measure does not take the probability of repeat offending or victimization into account, however. What are desirable as "at risk" measures are transitional probabilities that provide information on a risk over time. These probability measures conveniently are time based, so that they can be stated that if one offends at (or is victimized at) point "x" in time, one's probability is "p" of also being an offender or victimized at time "y". Measures of transitional probability--the probability of being in the same or different states during any selected time intervals --convey more information as social indicators and for testing theories than do ordinary point-in-time measures of risk.

Individual versus Population Rates. Much neglected is the matter of calculating rates for both individual members of a population and for that population over time. One ordinarily calculates a rate only for a population at risk, e.g., a prevalence or an incidence violation rate for all males 12 years of age and over or a victimization rate for all persons 12 years of age and over at regular intervals in time. Inferences then are made about changes in the rates over time. The rates can be varying, however, because both the prevalence of victims or violators in the larger population is changing, because the size of the exposed population is changing, or because the individual rates of offending are changing. Though changes in the absolute size of the most exposed subpopulations account for some variation in an overall rate for a population, the more likely sources of change in the violation incidence rate for a population is changes in the prevalence and individual offender rates. Such statistics, however, required flow information systems and flow models by means of which one can calculate cohort-specific rates as well. Without information on both prevalence and individual incidence rates, it will be impossible to understand changes in rates for a population (Reiss, 1980).

Counts of a Population Base. The choice of a base for rates can be affected considerably by the discretionary behavior of the agency which makes counts. Ideally, one wants a procedure for making the counts and a method for its administration that produce an unbiased tally of the eligible population. These two conditions are least likely to be satisfied when an agency measures both the base population and the phenomena for which rates are calculated for that population. Just how an agency can control information on its crime rate is well understood by those conversant with the nuances of crime statistics. Among police agencies, such control procedures are commonly and quite appropriately known as "killing crime." But police departments have fewer degrees of freedom in "killing" crime

UCR reporting than do many white-collar "crime" enforcement agencies. The base for calculating UCR crime rates ordinarily is derived by count or estimation independent from the police agency generating the count of "crimes." Hence, each police agency can manipulate the rate only by manipulating the count of crimes known to the police--again a most appropriate label: known to the police. Many agencies reporting white-collar law violations can manipulate both elements in the rate since they derive the counts for both. This is of course bound to be true for "case"-based statistics in all law enforcement agencies.

Since counts for bases are often not made continually, particularly independent counts, resort must be had to estimation of the count for statistics calculated for different time points. Estimation techniques require a model of what causes change in the size and/or composition of the population and ways of assessing changes in them. Such procedures also are more open to manipulation if done by a reporting agency.

What is at issue here, then, are matters of how one can acquire information on the accuracy of information in the counts of bases and for the appropriate measure of the rate.

Setting aside questions of how independence in generating base population counts affects the accuracy of rates, there are yet other matters of how to define the base population and how to count it. Let us begin with a very simple illustration--a census count of a population of persons.

There is no categoric way to define a population of persons as the terms "resident population," "civilian population," "noninstitutional population," "population including Armed Forces overseas" and similar concepts illustrate. There are at least three separate estimates of the total population of the United States prepared monthly by the Bureau of the Census: (1) the total population, including Armed Forces overseas; (2) the resident

population; and (3) the civilian population. Periodically estimates are made for the "resident noninstitutional population" as well.

There are even greater difficulties attending upon the definition of a population of organizations, such as businesses or corporations, since organizations, unlike persons, can change their shape, age, and size dramatically. Hence it is not as easy to conceive of following a cohort of organizations as it is of following a cohort of persons. Longitudinal designs are more readily executed for persons than organizations as units of count.

There are, in addition, problems of how to count both persons and organizations. We have noted that censuses provide more accurate counts of persons than of organizations. One of the principal problems besetting the calculation of organizational rates, then, is how one can obtain actual counts or estimates of the number of organizations. This is a matter for intensive research not only because it refers to bases for statistical reporting but also because it becomes essential for any kind of substantive research on organizational violations and victimization.

Another counting problem involves the comparison of violation rates among two populations with different bases at a given time.

Given two populations for which prevalence rates of violation are measured, all or almost all of one population may be eligible units that may violate, while only a fraction of the other population may be capable of violating. This is not uncommonly the case when one population is constantly exposed to the conditions that give rise to violation while the other is exposed only sporadically or episodically. Measuring the latter population at any point in time provides information on only a proportion of those eligible over time. What is more, the two sets of eligibles may overlap, but they ordinarily will involve substantial numbers who are not in the potential violating condition at both points in time.

Service delivery systems, such as Medicare, provide an excellent example of this problem in comparing violations of different groups in the delivery system. The Medicare providers will be far more constant in membership over time than their clients. At any interval in time, thus, one will tend to have the same providers but somewhat different populations of clients. To compare the violation rates of providers with those of clients can lead to erroneous inferences, unless the comparison is made for clients and providers who were both in that status for the entire interval during which violations are counted. Even then,

one cannot ignore the possibility that varying numbers of clients or providers can influence the fact of violation, e.g., a shortage of physicians could lead to provider violations.

In passing, we note that where one is testing substantive theories, the choice of a base population is a particularly critical issue since the relationship of the explanatory variables to the base population is also involved. If one is trying to explain variation in victimization rates, the choice and use of explanatory variables will depend upon whether they are person-based or household-based victimization rates, or rates for some other population of victims, such as organizations. If one merges both households and persons as victims and uses the general population as a base, the selection of explanatory variables is hopelessly confounded.

These considerations do not exhaust the problems that arise in connection with the selection of appropriate bases and their counting. But they call attention to the critical nature of bases for both social reporting and tests of substantive theory.

Concluding Observations

There have been two major themes in our examination of the social organization of conceptualizing, classifying, and counting white-collar law violations. The first theme is that ways of classifying and counting white-collar illegalities, their consequences, and their disposition depend upon causal models, some of which are derived from existing substantive theories about law violation, some of which relate to the social organization of data collection and reporting, and some of which relate to methods of analysis. At the same time--and almost paradoxically--all of these models require the kind of information that information systems provide--not only to test but also to refine existing models and to develop new ones. A critical element in the resolution of that paradox is an understanding of how information is shaped by, and shapes, theoretical models and how operating systems shape information.

A second and perhaps less satisfying theme is that the current state of federal agencies' information systems makes it difficult to develop social indicators on white-collar law-breaking without substantial alteration in data collection, processing, and reporting subsystems. Because the information systems are idiosyncratically adapted to each agency's view of its mission, the prospects of much progress in this respect are dim without the assistance of some central statistical coordination. The role of central statistical coordination is not only that of furthering the

general utility of data, but also introducing into the social organization of data systems the norms, techniques and controls of the scientific profession of statistics. To a considerable degree, most of the information systems we have reviewed have only been peripherally affected by the professionalization of statistics that characterizes government data systems in such areas as economics, health, education and human resources. In most instances, the imperatives of good statistical information, if recognized at all, are subordinated to, and compromised by, priorities accorded immediate operational and administrative purposes. In a few instances, however, the principles developed by statistics as a scholarly discipline, and in research, have achieved routinized application in agency data system.

Using information from current information systems to test substantive theories without substantial knowledge of collection, processing, storing, and reporting systems is a risky venture. Quite often the current data cannot provide satisfactory tests of substantive theory, yet are nonetheless put to it. The result is a body of empirical investigations that are inappropriate and inaccurate tests of theory.

VII. FUTURE RESEARCH ON INFORMATION SYSTEMS ON WHITE-COLLAR LAW-BREAKING

Introduction

Our review of the statistical sources of information on white-collar law-breaking has documented the importance of the social organization of information systems in defining, classifying, and measuring violations of law as well as the structure of violation events and their consequences. We have emphasized repeatedly that only by understanding the organized ways that information on illegalities comes to attention and is collected and processed can we use that information in counting. Clearly any system of social reporting and social indicators must rely heavily upon such understanding of the social organization of information systems and the consequences of such organization.

The same understanding is important for substantive research on white-collar law-breaking. There are three major reasons why substantive research benefits substantially from research on information processing systems.

What is particularly obvious about most current research on white-collar law-breaking is that it relies almost exclusively upon national level statistics and information developed by Federal executive and regulatory agencies, prosecutors, courts, and corrections. The sophistication and growth of substantive research on white-collar violations of law must depend very heavily upon an understanding of those statistical information systems and on the detection, mobilization, and processing systems that generate the required information. The greater the availability of statistical information on white-collar law violations in public and published forms, and the more accessible that information is in agency information systems, the more rapidly we can develop substantive knowledge on white-collar crime.

Unfortunately, it has been less than obvious to most investigators doing substantive research that the ways in which information is gathered and processed affect considerably the uses to which it can be put. Many conclusions from current research are suspect because of a failure to understand how social organization affected the quality and quantity of information available to test the substantive theory. An excellent example of how knowledge of the information system can be taken into account in testing substantive theory on detecting illegalities is Shapiro's (1980) work on the SEC. A careful examination of her investigation discloses how much time and effort might be saved in a given piece of substantive research were one

to have more information at the outset on how the information to be used was generated and stored, and if better guidelines were available as to what to look for in the quality of data before they are used analytically.

It is easily lost sight of, moreover, that statistical data illuminate some of the major substantive issues in explaining crime and criminality, and violation of and compliance with law. We have noted that there appear to be substantial differences in the organization of compliance and penalty law enforcement systems. We have tried to show how information is different in these two types of systems, and to indicate how such information illuminates the very nature of those differences. Any program of substantive research must pay attention to the ways that the structure of law enforcement, compliance, and settlement systems require statistical information for their very existence. It is difficult to imagine how such agencies could operate without the basic units that form the core of their information system. At the same time, substantive research using statistical information for those core units may disclose alternative ways of organizing that system and the manner in which it processes information.

Just as it is impossible to imagine a modern law enforcement system--in the broadest sense--operating without statistical information, so the system is impossible to imagine that one could change it through substantive research without statistical concepts and information. The very core of evaluation of social programs is statistical information. It is mistaken to assume that one always can or should rely upon statistical information that is developed independently of those information systems to evaluate an agency's programs of change. It must be understood that each source of information is affected by its institutional underpinnings.

Finally, in the long run substantive research must come to depend upon institutionally organized information systems on compliance and enforcement for most of the data to test theories with regard to violation and conformance. No society can afford the massive investments in independent sources of data collection that are required for the test of theory. What is required is that there be a continual interchange between those who develop and those who use information within an agency and those from without who find such information useful in testing theory. Much as economists have relied--perhaps too heavily in some instances--upon institutional sources of information for tests of their theories, so all theories in social science must rely, at least to a substantial degree, upon institutionalized sources of data collection whose major purposes are not scientific. If it must be so, if for no other reason than that the scale of information collection

and the cost of its processing are prohibitive. We must spend more of our resources to understand the nature of those systems and the effect they have upon the quality of information. No data source is without its sources of error. What is essential in using data to test substantive theories is that one be able to assess the effect that error has on what is concluded. The more one knows about and understands the sources of inaccuracy in information and can estimate actual amounts of error for each source affecting a body of information, the greater will be the information's utility in testing substantive theory.

The remainder of this chapter is devoted to rather brief statements on kinds of research on the social organization of information systems that seem essential to utilizing statistical information in social reporting and in testing substantive theories. We have not attempted to outline in any detail the way such research might be designed, but have focused rather on its *raison d'etre*. Nor have we attempted to outline in any detail the many substantive implications of a particular research inquiry, preferring rather occasional illustration, since in many cases hypotheses were set forth within the body of this report. We do not, for example, bother to restate substantive hypotheses about how white-collar violation events differ from ordinary ones or about how compliance and penalty law enforcement systems differ. We would assume that many individual projects might well pose such substantive hypotheses as the core ones in regard to the information systems we suggest be investigated. We have organized the suggestions for research into three major types (Research and Development: Information Sources, Problems of Classifying and Counting, and Analytical Problems). In the latter types there is a very close relationship between these problems and kinds of substantive research.

Research and Development: Information Sources

There are four major types of research and development on information sources and systems sources that we consider particularly worthy of investigation. They are investigations of (a) the properties of governmental information systems and their effects on information, (b) alternatives to government sources, (c) systems of social reporting, and (d) investigations of the organization of the detection, collection, processing, and storing of information on white-collar law-breaking. Each is discussed briefly below.

Properties of Government Information Systems.

In our report we have relied almost exclusively on federal sources of information from selected executive and judicial departments and from some independent regulatory agencies. Throughout the report we have suggested the kinds of inquiry that need to be made to understand more fully those information systems. Several major undertakings are worthy of consideration.

Decentralization of Data Collection, Classification, and Counting Decisions. A few intensive case studies of local, regional, and national office collection and reporting systems would be useful for understanding how the decentralization of information systems affects the quality and quantity of agency data. Just how much of a role is to be accorded organizational processes and how much to differences in the social organization of behavior systems such processes in some way monitor, regulate, or administer is important for understanding aggregated statistical information and theory testing.

The kinds of information sought in such inquiries will vary considerably, depending upon which agencies are selected for investigation and the nature of their mandates. It would seem worthwhile to select at least one or more compliance and one or more penalty law enforcement systems in such research and preferably to choose them within the same functional domain, e.g., safety, commercial transactions, or health. A comparison of the CPSC with the FTC might be very informative, for example.

An alternative strategy would be to select several agencies that are linked in a case flow system. Thus one might begin by looking at the way tax cases are generated in a number of regional offices of IRS, follow the cases through the Tax Division of the U.S. Department of Justice, and then, if referred, on to U.S. Attorneys and their processing in the U.S. Courts. For the IRS, variability among decentralized units of the U.S. Attorneys' offices and of the U.S. District Courts can be scrutinized as well. The advantage of this design is that it would permit one to examine case flow as well as organizational variability in case processing.

The Effects of Discretionary Processing on Case Flow. A closely related line of inquiry is the study of the organization of discretion and its effect on the flow of information in a case flow system of information processing. Of particular interest would be an examination of how the discretionary processes of an agency in selecting cases for output to another information system compare with those from other sources. This could be true of a number of different kinds of units within the Department of Justice, such as

Antitrust, Criminal, and FBI, or for U.S. Attorneys and U.S. Courts. Such an inquiry might build upon Rabin's (1972) work and the preliminary work using the U.S. Attorneys information system reported in Chapter III.

Interagency Sources of Violations. For any given kind of violation, a number of different agencies may contribute to aggregate information. Each of the Inspector General offices, for example, contributes information on the same types of employee violations. It would be important to understand what accounts for the differential contribution of each agency to the aggregate total. Why, for example, do most IG offices report so few employee violations involving program fraud? How much of differences in reporting is due to differential opportunities to offend? How much to differential detection? And, how much to differential recording and reporting?

Understanding these differential contributions to violation rates lies at the core of assessing the meaning of any aggregate statistic on white-collar law violations. Ideally, one would require information on each agency's contribution to the aggregate rate for all major types of law violation. Even where there are only two agencies with appropriate jurisdiction, such as the FTC and the Antitrust Division of DOJ, information on each one's contributions is critical to an understanding of any aggregate statistic of antitrust violations. At the same time, these investigations of agency contributions to aggregate rates should enhance our substantive understanding of the social organization of information systems.

State and Local Government Information Systems. A sizeable proportion of all white-collar law violations can be found in Federal information systems. Yet many states have comparable agencies to regulate and enforce the law, as do some local governments for some matters. We know very little about what proportion of all matters of a given kind will be generated by each of these jurisdictional information systems and the extent of their overlap. To what extent do state and federal environmental protection agencies, or welfare systems, generate the same type of violations and what is the relative contribution of each information system to aggregate statistical information?

We should be especially interested in the extent to which one information system picks up kinds of white-collar law-breaking that are virtually absent from the others. Part of this assessment effort should be devoted to instances where federal statistical information systems substantially underrepresent violations of a given kind or fail to produce information on them altogether. We would expect, for instance, that HUD would generally underrepresent and distort white-collar law violations of

housing codes. And should we not also expect that federal information systems will substantially underreport industrial espionage and related offenses? Would we not expect, likewise, that state and local government organizations would detect a host of violations relating to licensed premises, facilities, or occupational practices that are largely absent in federal information systems?

The extent to which government itself is the source of violations at these different levels must also be investigated. How much corruption is there of public office holding at each level? How "good" are the data on official corruption at each level? Does one have to rely largely upon non-governmental sources of information on corruption of the public trust, given the investment and organization of government in that particular information?

Alternative Sources of Information

We rely primarily upon government information systems both for statistical reporting and to test substantive theories about white-collar law-breaking. There are alternative information systems. Some of these are private collection systems. Others, such as the news media, acquire their information from a variety of public and private sources. Still others represent independent ways of organizing the collection of information on white-collar law violations. A number of these alternative ways of acquiring information should be investigated.

Victimization Surveys. The current National Crime Survey is oriented toward gathering information on the victimization of households and persons by ordinary crimes covered in Uniform Crime Reporting. Efforts should be made to determine whether one can accurately measure selected types of white-collar victimization germane to households and persons, including such offenses as consumer fraud, product safety, and exposure to health hazards. Such surveys should investigate not only whether persons report such victimizations, but also the criteria they use to detect their victimization.

The NCS abandoned its victimization survey for commercial establishments and never established one for other types of organizations. Yet, organizations probably are as often victims of white-collar as of ordinary offenses. It would be worthwhile to explore the extent to which one can sample organizations and develop reports of their victimization by white-collar law-breaking as well as by ordinary violations of law. The sample of organizations should include all major forms that are subject to victimization as organizations, including government and not-for-profit organizations.

Such victimization surveys might also investigate how each kind of victim responds to the different victimizations inflicted upon it.

Violator Surveys. We noted earlier that little has been done to develop self-reports of law violation by adults, even for ordinary crimes. Most self-report surveys are for young persons. Although they cover a wide range of deviant acts, violator self-reports do not embrace those relatively rare instances in which youth commit white-collar law violations. Youth violator surveys aside, the extent to which one can acquire information on white-collar law breaking by violator surveys needs to be explored.

One suspects that it might be especially difficult to develop self-report surveys of violation for organizations and persons in organizational roles whereas organization victimization surveys may be somewhat more feasible. Still, we do not know what range of white-collar law violations can be covered reasonably in violator self-report surveys, whether, for instance, violations done on one's own behalf or on behalf of the organizations in which one has membership are determinable. The suggestions of Biderman and Brury (1976), which were modestly implemented in the 1977 Quality of Employment Survey, are obviously practical (Institute for Social Research, 1979).

One needs at the same time to explore the appropriateness to detect different kinds of white-collar law violation of different sampling frames for self-report surveys. Officers and managers of organizations might be sampled to acquire information on their offending behavior on behalf of as well as against their employing organizations; stratification by position in organizations might be attempted.

Quite clearly, the development of a program of victimization and violator surveys for white-collar law-breaking requires a carefully thought out program of research, linking such development to current methodological work on self-report surveys. Elaborate "pilot surveys" should not be fielded hastily. Rather, developmental research focusing on measuring violations, violating, and victimization in white-collar law-breaking is a prerequisite. The interesting data from the two questions on "moral qualities" of a person's job from the 1977 Quality of Employment Survey merit analyses, and support should be given to extending the scope of this inquiry in the next version of that survey. Longitudinal analyses of comparable items in two survey waves may, for example, shed light on the prevalence of morally repugnant job demands as functions of economic pressures.

Private Detection, Collection, and Reporting Systems. We know very little about the range of private detection, collection, and reporting systems that store information on white-collar law violations. There are several types of such systems, each of which requires some exploratory investigation as to the kind of information it collects and how the process affects collection.

One of the neglected types of systems are private regulatory systems. These range broadly from those designed to regulate the activities of profit-making concerns, e.g., to control standards in an industry or the conduct of professional sports, to those designed to regulate not-for-profit organizations, such as private athletic leagues or fund raising groups. We know very little about the extent to which these organizations detect, process, and sanction acts that might qualify as white-collar law violations. It would be especially interesting to learn whether they collect statistical information on violations and how they report it.

Another major type of social control and enforcement system is found among the organizations regulating the practicing professions. Of special interest would be the professions of law and accounting, since they are most closely linked to the detection and processing of white-collar law violations. To what extent, on the one hand, can we acquire information on white-collar law-breaking in these professions and to what extent, on the other, do the professions acquire and store information on law-breaking?

It would be of interest to study variation in these regulating systems and to link it to the way licensing of practice provides means for sanctioning violation. We would guess that most bar associations and accounting organizations keep relatively poor statistical records on violations by their members and that sanctions for white-collar law violations are relatively infrequent despite the not infrequent involvement of attorneys in illegal practices disclosed by other organizations. We need to compare the systems of mobilization of matters for investigation of professional practice organizations with those, for example, of government regulatory systems. Similarly, it is of special interest to us to learn what violations of professionals would qualify as white-collar law-breaking under our definition.

Yet another kind of private system includes those organizations that deal with the consequences of harms resulting from white-collar law violations. There are a variety of such systems, one of which is typified by the Federal CPSC. Another type is insurance fraud investigation. Insurance companies regularly collect

information on insurance fraud, and they create organizations to pool information from their several companies and investigate "suspicious" claims and claimants.

Mass and Specialized Media. There are two major kinds of media that are at times used in the investigation of substantive hypotheses about white-collar law-breaking (Clinard, 1979; Geis, 1973). They are the major mass media of communication, particularly newspapers, and the specialized trade journals. There also are organizations that collect information from mass and specialized media on a regular basis and which can be used as information systems. Though the mass and specialized media are used fairly often in substantive research on white-collar law violations, these sources remain unevaluated as to the accuracy of their information, the selectivity of their reporting of various types of violations of law, and their utility for estimating law violation. One would like to determine, for example, whether mass and trade media might provide reasonably accurate descriptions of changes in patterns of violating or in enforcement for certain kinds of white-collar law violations. Such an assessment is essential if these media are to continue to be a source of information, even if only to supplement other information sources (Clinard, 1979), since the accuracy of the information is critical to the reliability of a test of theory.

Of particular interest is what elements of violations, their consequences, and their processing are regularly and systematically reported in the mass media and what are not. How much information, for instance, is provided on victims as contrasted with violators? Are organizations and persons in public office disproportionately selected for reporting? How much information can we gain on violations from their detection to a final disposition of the matters? What sources do the media use and how do they select and supplement information they obtain, for example, from the press releases of the many federal agencies? These questions in part get at the question of how a news information system meshes with the requirements of a statistical information system, particularly with case flow models of an information system.

We would rank the assessment of a news information system as a statistical information system as having a rather high priority, since potentially it is an important institutionalized source of data collection. Correlatively, we think that specialized trade journals require evaluation for the same reasons. In evaluating the news media, it is important to evaluate "national," "regional," "state" and "local" newspapers as information systems.

Perhaps the dominant medium of communication--television--is of less interest as a statistical reporting system, given its limited factual or "news" and "public enlightenment" coverage. Television, however, would be of interest for assessing the effect that reporting has upon levels of public information, opinion, attitudes, and behavior about white-collar law-breaking. The role of statistical information in forming those opinions and attitudes may be as difficult to assess as the role of the media itself in forming them. Unless inquiries into the relation of media to opinions can be proposed which resolve the difficult problems of measurement and causal attribution, such studies should not be given a high priority.

Perhaps one of the major deficiencies of some, but not all, private information systems--particularly media systems--is their selective attention to explanatory variables about white-collar law breaking. It would be especially worthwhile to investigate the kinds of causal or explanatory models the media employ in presenting different types of crime--political, organized, ordinary, and white-collar. Of special interest in those media explanatory models is the kinds of factors that are regarded as causal and the relative frequency with which the media present information on them in a given account of white-collar illegality. For our purposes we would be interested in the extent to which the media, present information that permits determination of the social standing of violators and their position of power, if any, and of how that position is used in committing the violation. How much information is given on illegal gain or consequences? And how much is left simply to reporting "legal charges"? This seems quite commonly the case, and suggests a high dependence of the media on news releases from law enforcement and justice agencies.

Systems of Social Reporting

At the present time systems of social reporting on white-collar law violations are as poorly developed for serving enlightenment and engineering informational functions as they are for research goals. Much agency information is inaccessible in public-use tapes and regular agency accountability reports are fragmentary, unstandardized, and more given to public relations than to public accounting. It would be worthwhile to develop more systematic knowledge of social reporting as well as more systematic social reporting. To those ends, several kinds of projects are worthy of support.

A Compendium of Federal Information Sources on White-Collar Law-Breaking. Our research for this report gathered information on a selected number of information systems.

For a few systems, we have been able to assemble information on their reporting subsystems, the quality of information, the nature of their collection and storage systems, and what information is accessible from public sources. For a few of these, also, we have been able to assemble some statistical time series and evaluate problems of utilizing them as social indicators of change.

Similar reports would be useful for statistical reporting and substantive research if prepared on all major Federal agencies. In addition to providing valuable sources of information of the kind mentioned above, a compendium, Federal Information Sources, might also tell how to gain access to agency information and the problems in using such information for different purposes.

To put together such a compendium would be time-consuming, tedious, and expensive. Yet the notion of data banks on white-collar law violations are an essential ingredient of social reporting and social research. Unless a compendium can provide information on the dos and don'ts of data utilization for each particular data source, however, the undertaking may produce more research capitalizing on error than would otherwise be the case.

Sourcebook on White-Collar Law-Breaking. Early on we have tried to present information and evaluate its utility for social indicators reporting. At the present time, none of the major sourcebooks on law violations and justice provides much by way of information on white-collar illegalities and their consequences. Part of the reason why this is so is their general lack of availability of such statistics. Even where major series can be assembled, however, few have been included in statistical sourcebooks.

A worthwhile project would be to develop statistical information that might be included in a major sourcebook on white-collar law violations and a parallel series for inclusion in current compendia reporting on law violations, including the Statistical Abstract and the Sourcebook of Criminal Justice Statistics. To the degree that such a project can generate time series that are accurate enough for indicators reporting, one could launch regular statistical inventories on white-collar illegalities.

Development of Data Collection Reporting Forms and Standard Formats of Statistical Reporting. Where agencies have common reporting requirements, such as for Inspector General Reports, no information can be compared systematically and no common form of reporting exists because there are no standardized data collection instruments or formats. Though the Inspector General

Offices are working by interagency agreements toward this end, special projects for designing such forms and formats might produce more accurate and worthwhile information.

Development of Data Collection on Explanatory Variables. Both social indicator reporting systems and substantive research operate with explanatory models in mind for which information is required. We suggest a modest effort devoted to determining what kinds of explanatory variables are currently collected in major information systems on white-collar violations of law and what kinds are available in parallel information systems, such as personnel files. Following such an assessment of current information systems, the project might attempt to detail the variable requirements of different explanatory models and design ways that such information might be acquired.

Organizational Features of Agency Information Systems

An agency's information system is made up of far more than its information processing center or bureau, if we take the view that the major form of work in any agency regulating activity or enforcing the law is the collection and processing of information. We regard this broader view as absolutely essential if we are to use available information in statistical reporting or substantive research. There are many facets of information systems that are worthy of special inquiry. We suggest investigating a few of them that we regard as especially salient for the development of statistical information on white-collar illegalities and on the disposition of such matters in formal social control agencies.

Mobilization systems. A number of investigators have laid the groundwork for the study of mobilization systems for law enforcement (Reiss, 1973; Shapiro, 1980). Of special importance is knowledge of the ways that organizations detect illegalities and how they are mobilized by external detection systems. Knowledge of mobilization processes is especially critical for the generation of bases for rates of statistical indicators. But it also is an essential condition for understanding the kind of information we have and do not have for the test of substantive theories.

Compliance and Penalty Enforcement Systems. We need to understand much better than is now the case whether there are substantial differences between compliance and penalty enforcement systems and, if so, how those differences create different information requirements and statistics. Of special importance is the development of measures of compliance, (e.g., abatement) and bases for compliance measurements.

At the same time, we need to learn more about how the organization of compliance systems affects the whole conception of a law violation, its detection, and its reporting. Compliance systems, for example, are more likely to generate continuous violation reporting and thus vastly increase information on specific violations or patterns of continuing violation.

What is of critical importance is a better understanding of the ways that organizations shift between compliance and penalty models when both are options. What determines different "equilibria" between compliance and penalty enforcement? How much is choice a function of the harm consequences of violations and how much the organization's capability to monitor and control recidivism or repeat victimization?

Problems of Classifying and Counting

Throughout our discussion in Chapters III to VI we have called attention to needed research on classification, measuring, and counting matters related to white-collar law-breaking. We shall provide brief statements of these problems here; the reader is referred to appropriate sections of the report for more detail.

Issues in Classification and Counting

Among the many different problems in classification and counting that are specific to white-collar violations, we would call attention to research on the following matters.

Development and Test of Classification Schema. There are a large number of classification schemes that need to be developed. Among the ones that we have given special attention to are classifications for mobilization of enforcement, for the characteristics of events such as violations, victims and violators, for the consequences of violations such as harm, and for matters of disposition such as of sanctions for violations. Other matters may be equally important, such as classifications for discretionary decisions of various kinds, means of detecting illegalities, and sources of referral and disposition. Once developed, such schema need to be tested using information from the same set of agencies that represent a cross-section of compliance and penalty law enforcement types.

Assessment of Current Concepts and Units of Measure. The main purpose of assessing current concepts and units of measure is to determine the extent to which it is possible to move to a uniform system of statistical reporting. How standard are units such as "case" counts and "caseloads" among agencies? What types of units are employed to measure

"damage," "harms," or "losses"? Are there common measures of administrative matters such as "cases pending" or "case dispositions" or "complaints received"?

Explorations in Standardizing Counting Practices. On this subject a number of large and small investigations seem worthy of pursuit.

Turning first to a major inquiry, we need to know much more about how to assess, rank, or evaluate the "seriousness" of different kinds of white-collar law violations, and how to compare the seriousness of white-collar with other kinds of law violations. More research is needed on both "actual" and "perceived" measures of seriousness.

A second major kind of inquiry is an investigation of organizations as victims and violators and problems in their counting. How does one define an organization, sample the universe of organizations, follow them over time, and determine when and for what purposes some of them may safely be treated as the same organizations and when as new and different organizations? What are the major characteristics it is important to count about organizations in addition to their status as violators and victims and the facts pertaining to them? This inquiry might be linked to tests of substantive theories about types of organizations and their proneness to victimization and violation. It is said, for example, that stock insurance companies are more prone to violating than are mutual companies. Are simple rates of violation sufficient to establish such differences or do adequate conclusions depend upon what kinds of bases and units are selected to test such differences?

A third major project might attempt to develop error profiles for information in various reporting systems, beginning with systems such as IRS where information on accuracy of measures is most likely to be available. The project might then move to consider what special problems of measurement error arise for different kinds of enforcement problems (e.g., measuring election frauds as contrasted with corruption of public office).

Among the projects of lesser scope are those relating to criteria for dealing with multiple counts and counting and measures of repeat violating and victimization.

Indirect Ways of Estimating Units of Violation Events. Given the limitations of many current statistical information systems, explorations in indirect forms of estimation are worthwhile. What indirect ways does one have, for example, of estimating levels of violations and of victimization? A project on this topic might begin by determining what kinds of indirect measures are currently

available from other sources and what kinds might need to be generated. Attention should be given to simple research designs that can provide both direct and indirect modes of estimating matters relating to white-collar illegalities. The possibilities for synthetic estimates of case flow should be explored in this connection.

The Referral Process. At the core of classification and counting is an understanding of referral processes among agencies and their consequences of such processes for classification and counting. Suggestions have been made for inquiry into referrals for different kinds of relationships--both formal and informal--in violation mobilization and processing systems.

Indexes of White-Collar Law-Breaking. Given the large number of white-collar law violations and the difficulties in measuring them accurately, it might be worthwhile to develop a set of white-collar indicator violations or some overall indexes with rational properties that do not distort when used in comparison or measurement over time. Such a project would be exploratory and would require imagination, knowledge of white-collar illegalities, and measurement skills. This is no small task; it is essential to avoid the pitfalls of another NCS victimization rate based on reports of incidents for UCR index crimes.

Analytical Problems

Our suggestions here refer to certain kinds of analytical problems that arise in both statistical reporting and tests of substantive theories using information, measures, and counts from current systems of statistical reporting.

Operationalization of Our Proposed Definition of White-Collar Law Violation. How complete and accurate is the information available in selected information systems for classifying legal violations as white-collar as compared with some other major form of law violation? Ideally one would want to distinguish among our four major types of law violation and determine whether current information systems permit such four-fold classification. Among the special kinds of issues for investigation are these:

- (1) Operationalization of position of power and criteria for determining its "significance".
- (2) Operationalization of illegal gain or consequences.
- (3) Determination of organizational status.

We likewise would hope to determine whether our definition could be applied to the whole range of law violations, especially of crimes. Can one, for example, determine which homicides are white-collar illegalities and whether criminal negligence is involved in deaths resulting from white-collar illegalities?

Simultaneity in Causation. There are repeated instances of simultaneous causation in testing substantive theories of white-collar law violations. We need to determine how to identify equations in simultaneous equation models explaining white-collar law violations or deterrence of them.

Stock and Flow Models. Our current systems of statistical reporting are designed to measure stocks in each system at various points in time, e.g., cases pending at the beginning and the end of a calendar year. There are few measures of case flow within and among information processing agencies. Of special interest, of course, is the flow of cases from administrative processing systems to civil and criminal processing systems.

Especially neglected is the matter of processing white-collar law violations through civil court systems, such as courts of special jurisdiction, customs courts, and tax courts, or civil courts of general jurisdiction. Indeed, it is to be doubted whether current systems provide an opportunity to determine what proportion of a U.S. Attorney's civil court case load or that of the U.S. Court itself involves white-collar law violations. The same may be said for administrative law systems. These are largely neglected and uncharted settlement and justice systems, although they account for the disposition of a sizeable proportion of white-collar law violations. The criminalization of conduct and the final state processing of matters as criminal account for only a small proportion of all matters that originate as white-collar violations of criminal law and for only an infinitesimal proportion of all matters originating as white-collar law violations.

What also is needed are studies of the flow of mobilizations through agency processing systems and through administrative, civil, and criminal disposition systems. Even one or two careful case studies will add enormously to our understanding of the flow of cases and information about them and the effect of flows upon classification and counting.

Explanatory Models and Variables. We have dealt with this problem in assessing current information systems. Here we would urge attention to one other aspect--the construction of three kinds of explanatory models: models of the etiology of different information systems in regard to

white-collar illegalities and their effects on information; models of the administrative use of information on white-collar illegalities; and, models of the etiology of white-collar illegalities and how matters and information about them enters and exits from social control (information) systems. In the long run such models will provide not only the kind of information we need for social reporting and substantive research, but they also will sensitize us to the role of explanation in developing information systems. Central to explanation, of course, are the critical matters to be explained and what will explain them.

Conclusion

We conclude our specific suggestions for research with a general note on strategy and tactics of investigation that returns to our beginning argument. It would be mistaken to assume that the development of the elements of social reporting are somehow adjunctive to the test of substantive theories about white-collar illegalities and their social control. Quite the contrary. Our tests of substantive theories depend in large part upon our understanding and assessment of the systems that generate the information about what we wish to explain and about that which explains, including the bias and accuracy of information. There is no satisfactory logical separation of statistics and research tasks in the testing of theory. Developmental research on statistical reporting should be compatible with tests of substantive theories, including tests of substantive theories about the social organization of knowing about law violations and their disposition.

The statistical systems of large organizations, including government, represent in large measure the technological transfer of concepts and techniques first developed in the world of research and, then, incorporated into the routines of organizational administration and operations. One objective of the various inquiries we propose should be to illuminate this process to help speed it in selective and functional ways so that the routine information from agencies on white collar violations can derive from the scientific enterprise the virtues of accuracy, discrimination, reliability, representativeness, objectivity, conceptual explanatory power and generality at which research methods and theory aim. Agency statistics, however, take much of their character from sources other than scientific methodology and theory, as we have continually emphasized, in that they are products of the particular social organizations that produce them.

Social research in the area of our concern, as in most areas, is, in turn, heavily dependent upon the information-gathering capacity of non-research institutions. Just as the government statistics to which we have attended

represent the routinized applications by legal and administrative institutions of elements of the culture of the research world, social research makes routinized (and often as unthinking) application of the statistics of those institutions. Research uses of data require understanding, both general and particular, of how the social organization of information generation affects data. The expanding areas of interpenetration of the worlds of law, administration and social science are deserving of particular attention, for the illumination of those who are actors in each of these worlds or, simultaneously or sequentially, in more than one of them.

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About the National Institute of Justice

The National Institute of Justice is a research, development, and evaluation center within the U.S. Department of Justice. Established in 1979 by the Justice System Improvement Act, NIJ builds upon the foundation laid by the former National Institute of Law Enforcement and Criminal Justice, the first major Federal research program on crime and justice.

Carrying out the mandate assigned by the Congress, the National Institute of Justice:

- Sponsors research and development to improve and strengthen the criminal justice system and related civil justice aspects, with a balanced program of basic and applied research.
- Evaluates the effectiveness of federally-funded justice improvement programs and identifies programs that promise to be successful if continued or repeated.
- Tests and demonstrates new and improved approaches to strengthen the justice system, and recommends actions that can be taken by Federal, State, and local governments and private organizations and individuals to achieve this goal.
- Disseminates information from research, demonstrations, evaluations, and special programs to Federal, State and local governments; and serves as an international clearinghouse of justice information.
- Trains criminal justice practitioners in research and evaluation findings, and assists the research community through fellowships and special seminars.

Authority for administering the Institute and awarding grants, contracts, and cooperative agreements is vested in the NIJ Director, assisted by a 21-member Advisory Board. The Board recommends policies and priorities and advises on peer review procedures.

NIJ is authorized to support research and experimentation dealing with the full range of criminal justice issues and related civil justice matters. A portion of its resources goes to support work on these long-range priorities:

- Correlates of crime and determinants of criminal behavior
- Violent crime and the violent offender
- Community crime prevention
- Career criminals and habitual offenders
- Utilization and deployment of police resources
- Pretrial process: consistency, fairness, and delay reduction
- Sentencing
- Rehabilitation
- Deterrence
- Performance standards and measures for criminal justice

In addition, the Institute focuses on priorities identified by the Congress, including police-minority relations, problems of victims and witnesses, and alternatives to judicial resolution of disputes.

Reports of NIJ-sponsored studies are reviewed by Institute officials and staff. The views of outside experts knowledgeable in the report's subject area are also obtained. Publication indicates that the report meets the Institute's standards of quality, but it signifies no endorsement of conclusions or recommendations.

Harry M. Bratt
Acting Director

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