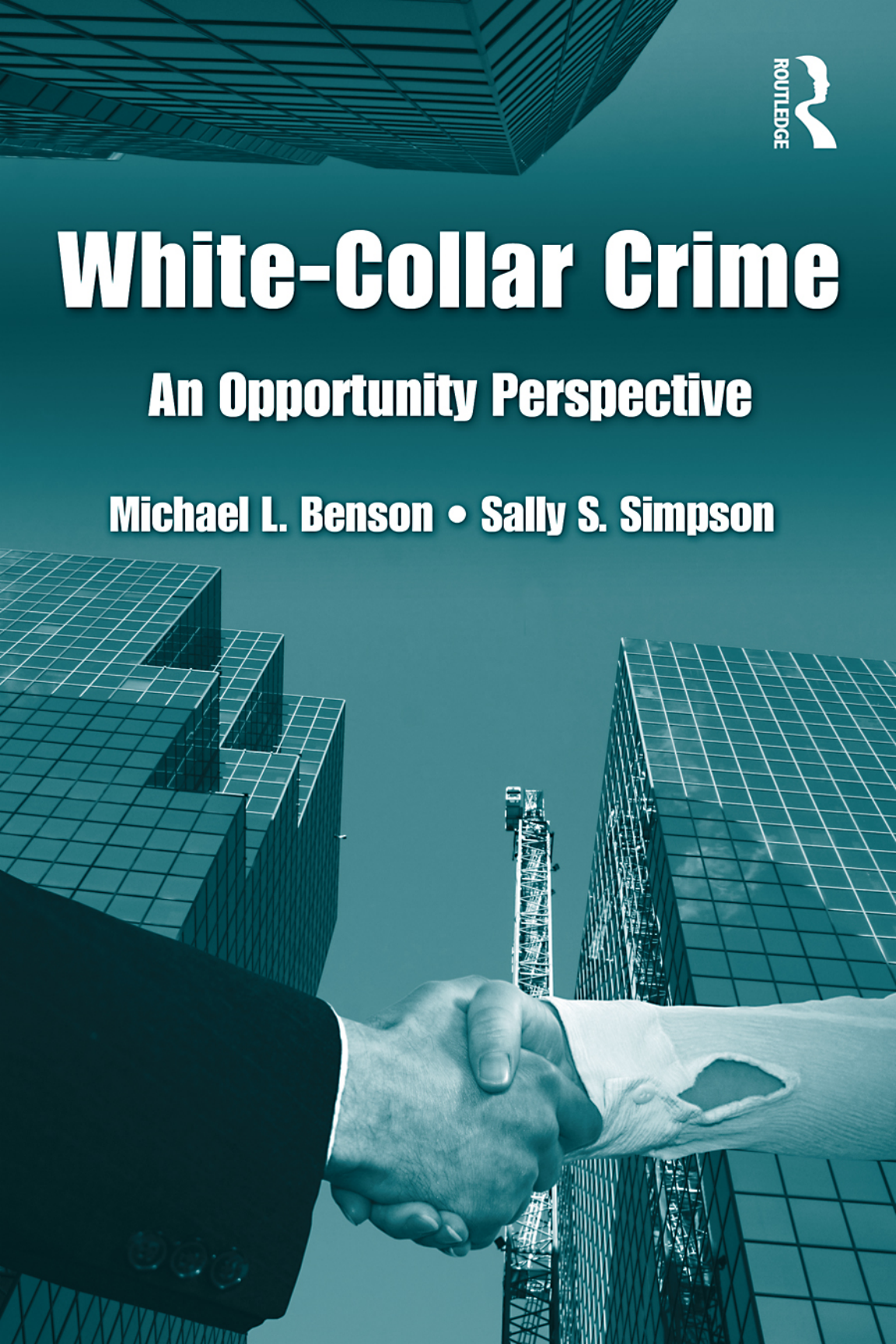


White-Collar Crime

An Opportunity Perspective

Michael L. Benson • Sally S. Simpson



WHITE-COLLAR CRIME

This book is designed to provide college students with an introduction to the study of white-collar crime. It analyzes this topic from the perspective of opportunity theory, which is growing in popularity in criminology and criminal justice, and this book presents the first attempt to apply it systematically to white-collar/corporate crime.

Michael L. Benson is Professor of Criminal Justice at the University of Cincinnati. He is a past President of the White-Collar Crime Research Consortium. In addition to numerous journal articles on white-collar crime, he co-authored *Combating Corporate Crime: Local Prosecutors at Work*, which received the 2000 Outstanding Scholarship Award of the Crime and Delinquency Division of the Society for the Study of Social Problems.

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WHITE-COLLAR CRIME

AN OPPORTUNITY PERSPECTIVE

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Series Foreword

Criminology and Justice Studies offers works that make both intellectual and stylistic innovations in the study of crime and criminal justice. The goal of the series is to publish works that model the best scholarship and thinking in the field today, but in a style that connects that scholarship to a wider audience including advanced undergraduates and graduate students. The works in the series help fill the gap between academic monographs and encyclopedic textbooks by making innovative scholarship accessible to a large audience without the superficiality of many texts.

White-Collar Crime: An Opportunity Perspective presents a new way of examining the vastly under studied area of white-collar crime. Professors Benson and Simpson have, in line with the goal of the series, put together a thoroughly researched, innovative, and accessible text on white-collar crime. Making use of an opportunity perspective, the authors make a compelling argument for rethinking how to analyze white-collar offending. This new perspective also presents potential additional avenues to prevent white-collar crime. After superbly covering the usual areas such as defining white-collar crimes and identifying the criminological theories that have been used to explain why people engage in white collar crime, the authors provide concrete examples of how opportunity influences the commission of select white-collar offenses. Their examples span the gamut of white-collar offenses. This wide coverage illuminates the breadth of the white-collar crime problem in America. Notably, as the book was headed to press, the meltdown of the financial industry based on greed and widespread fraud, makes the publication and wide distribution of this work all the more important.

Shaun Gabbidon

Preface

Most of us recognize that we could be victims of crime and try to take reasonable precautions against this happening. We lock our doors, avoid dangerous neighborhoods, and keep our belongings close by when we are out. These simple precautionary measures work primarily because they make it hard for offenders to get close to us or our property. They probably do help reduce the chances that we will be the victims of certain types of crime, such as burglary, robbery, assault, and larceny.

Unfortunately, these measures are unlikely to have any effectiveness against the types of crimes and criminals discussed in this book—white-collar crimes. White-collar crimes are committed in ways that are difficult, indeed often impossible, to prevent by simply blocking the offender's access to his or her target. White-collar offenders use techniques and take advantage of opportunities that are unavailable to ordinary street crime offenders to carry out their criminal intentions. Their crimes can harm victims both directly and indirectly without the victims even knowing it. Compared to ordinary street crimes, they pose significantly different risks and threats to individuals, government, and society in general.

This book is designed to help students better understand how white-collar crimes work. We take what we call an “opportunity perspective.” This perspective is growing in popularity in regard to ordinary street crimes, and this book represents the first attempt to apply it systematically to white-collar crime. We assume that all crimes depend on offenders having some sort of opportunity to commit an offense, and that different types of crimes have different “opportunity structures.” The idea that opportunities are required for crime to occur is such a simple one that

it is often overlooked in discussions about crime. Obviously, the crime of, say, bank robbery depends on banks being available to rob. Thus, when people think about the causes of crime and how best to control it, they often focus on offenders and the question of why they do it. The question of motivation is, of course, an important one, and we address it in this book. But, as we will show, the seemingly simple idea of opportunity turns out on closer analysis to be more complex than we might have thought and to have a number of important implications for our understanding of the causes of white-collar crime as well as the problem of how to control it.

Although in recent years there has been a growing number of monographs and textbooks on white-collar crime, this book has several distinguishing features that we think will make it valuable to students. First, we focus explicitly on opportunity structures and white-collar crime. Though other books have mentioned this topic, they rarely treat it as systematically as we do here. By analyzing opportunity structures, we help students understand how white-collar crimes are committed, including crimes that have physical as well as financial effects. Understanding how a crime works is the first step in developing ways to prevent it. Our analysis of opportunity structures includes both their subjective and objective dimensions. Thus, rather than simply describing the many terrible things that white-collar offenders have done, we try to give students a way of understanding the offences so that they can do more than simply be morally outraged by them.

Second, opportunities to commit white-collar crime are not randomly distributed throughout society. Some people have greater access to white-collar crime opportunities than others. Accordingly, we discuss at length how the major demographic variables of gender, race, and social class are linked to both white-collar crime offending and victimization. In this way, we ground our analysis of white-collar crime in a broader sociological perspective.

Finally, drawing from our opportunity perspective, we present a new way of thinking about white-collar crime control. Discussions of crime control in regard to both white-collar and other forms of crime often are too narrowly focused on offenders. How can we get better at catching them, and how severely should they be punished when we do apprehend them? The opportunity perspective alerts us to the possibility

that sometimes we can prevent or at least reduce particular forms of crime without necessarily doing anything directly to the offender. Rather, we can at times prevent offenses by altering some aspect of their opportunity structure. Based in situational crime prevention theory, this way of thinking about crime control is becoming increasingly popular with academicians and law enforcers. We show that it is an approach that can also be applied to white-collar crime.

Like virtually every other textbook on white-collar crime, Chapter 1 begins with a discussion of the thorny problem of how to define white-collar crime. We treat both the offender and offense-based approaches to definition and propose a partial synthesis of the two views. Chapter 2 presents a detailed analysis of what is known about the demographic, social, and psychological characteristics of white-collar offenders. In Chapter 3, we review several of the traditional theories or explanations of white-collar crime. In Chapter 4, we introduce the opportunity perspective in more detail, discussing the special features of white-collar crimes and their reliance upon distinctive techniques. Deception, abuse of trust, concealment and conspiracy as techniques of criminal offending are addressed here. In Chapters 5 and 6, we apply the opportunity perspective to selected forms of white-collar crime. Although we do not cover every possible type of white-collar crime, we focus on a broad and heterogeneous selection of common white-collar offenses, including both property crimes and those that have physical effects, too. Chapter 7 deals with the subjective or symbolic dimensions of opportunities. We discuss how white-collar offenders are adept at defining their crimes in morally favorable terms and how this contributes to their offending. Chapter 8 presents data and analysis regarding the distribution of white-collar offending and victimization by gender, race, and social class. In Chapter 9, we address the problem of how best to control white-collar crime by legal as well as extra-legal means. Finally, in Chapter 10, we summarize our arguments regarding the special features and techniques of white-collar crime. Then we speculate on the future of white-collar offending and offer some thoughts regarding the policy implications of our analyses.

Acknowledgments

Working in the white-collar crime field can be a challenge. There is too little funding, too few data bases, and a lingering sense that our work has little impact on the broader field or social policy. Yet, there is a small group of dedicated scholars, from a variety of countries and epistemological positions, who do brilliant work toiling in these trenches. Although we may come at these problems in different ways, we all share a belief that it is important to carry Sutherland's torch, to continue to raise the issue of white-collar crime (in its many forms and permutations), and challenge the typical ways in which crime and criminality is depicted and understood across our nations. I dedicate this book to my partners in white-collar crime, wherever you may be, but especially to Gilbert Geis—an inspiration to us all.

I would be remiss not to also thank Stas and Gabrys for their love and support. You make the successes sweeter and the failures tolerable.

Sally S. Simpson
September 9, 2008

Many of the ideas presented in this book were developed in part through casual discussions with my colleagues and students at the University of Cincinnati. In particular, talking with Frank Cullen, John Eck, and Tamara Madensen helped refine many of the ideas presented here. They certainly contributed to this book, even though they may not have known they were doing so at the time. Students in my seminar in White-Collar Crime also helped with their questions in class and their willingness to listen to lectures that were more works in progress than well-thought-out presentations. Former graduate assistant Kevan

Galyean was a very efficient fetcher and carrier of books who helped me avoid wasting a lot of time hiking around campus and prowling the university library. Both Sally and I also give special thanks to Kathleen Brickey, who very generously made available to us data she has collected on post-Enron convictions for financial fraud in corporations.

In the past, it used to be customary for authors to thank a librarian or two for their help getting material. Nowadays, however, with the availability of journal articles, government documents, and even standard books online, it seems that most faculty have little direct contact with librarians. Happily this is not the case for me, as my wife, Shelley, is a librarian. Besides being the ever supportive, patient, and loving Griselda who inhabits the pages of all acknowledgments, she actually provided real assistance by showing me how to find material online, electronically organize the references for this book, and use some of the advanced features available in MS Word. I very much appreciate her help.

Last, a word of thanks to Stephen Rutter and Leah Babb-Rosenfeld at Taylor and Francis for their patience in waiting for us to get done.

Michael L. Benson
September 11, 2008

WHAT IS WHITE-COLLAR CRIME?

White-collar crime is a technical term that has migrated out of the realms of science and academia to become part of public discourse. Stories about white-collar crime are often in the news. If you were to ask the proverbial “man or woman on the street,” you would surely find that most of them have heard of white-collar crime. However, if you pressed them to explain just what white-collar crime is, the answers you would receive would not be very informative. Most people would probably say something about men in suits who steal money and don’t go to prison and let it go at that. Yet, the problem of white-collar crime is enormously complex. It raises difficult social, legal, and theoretical issues, issues that have important implications for society and for the field of criminology. This book is designed to help you better understand the complexities of white-collar crime so that you can think critically and analytically about this important social problem. Of course, thinking critically and analytically about a social problem may strike some readers as not terribly exciting. For those of you who are looking for a more compelling reason to keep going, we hope that what you learn in these pages also will help you avoid being victimized by white-collar offenders.

Unfortunately, avoiding such offenders is not easy. White-collar criminals lurk in every industry and profession. For example, whenever you engage in a business transaction with any sort of professional, there is the potential for what we will call a “white-collar victimization.” We use the term *professional* here in a very loose sense to include anyone who offers to provide a specialized service for a fee. Besides the traditional professions such as law, medicine, and accounting, our definition includes

blue-collar and other service “professionals,” such as home remodelers, auto mechanics, plumbers, electricians, and real estate agents. Typically, when you hire any sort of professional to do something for you, it is because the professional knows more about it than you do, or can do it better than you can, or simply has more time than you do. In other words, you need the professional to do something that for some reason you don’t want to do yourself. However, how do you know that the professional did the *right* thing (i.e., the thing that was necessary and appropriate in your situation) in the *right* way (i.e., the most professional and cost effective way)? It is always possible that the professional took advantage of your lack of expertise to defraud or cheat you in some way.

Talking about doing the right thing in the right way is obviously vague. So, consider as examples two professions that most everyone relies on at some point in time—auto repair and medicine. We could use any profession, but these two have the advantage of familiarity, and they have been subject of research (Geis et al., 1985; Sparrow, 1996; Tracy and Fox, 1989). Suppose you take your car in for routine maintenance. A few hours later, the shop calls you at work to say your brake pads are thin and should be replaced for safety reasons. How do you know if you are being told the truth, and what are you going to do? You could go back to the shop and look for yourself. (Can you tell a good brake pad from a bad one?) You could take the car to another shop and get a second opinion. (Do you have the time for this?) Finally, you could just ignore the safety warning and put yourself and your family at risk. (How will you explain it if your brakes actually do fail and someone gets hurt?) We suspect that you will probably just accept the mechanic’s diagnosis and tell him or her to install new brake pads. If your mechanic is dishonest, then you’ve just fallen victim to auto repair fraud. Welcome to the club. According to one government survey, more than half of the money spent on auto repair is “wasted because of overcharges, work not performed, wrong repairs and incompetent work” (Thio, 1988:432).

Now, consider the medical profession. You have not been feeling well for a few days and decide to go to a doctor. She looks you over, asks some questions about your symptoms, and then recommends further tests in order to make a definitive diagnosis. At this point, you are in exactly the same position with the doctor that you were with the mechanic. You didn’t really know if you needed new brakes, and you don’t really know if

you need more tests. Of course, you could go and get a second opinion, but that's going to take more time. Besides, the doctor is supposed to be an expert. You are likely to accept the doctor's advice and agree to get the tests. However, unbeknownst to you, the doctor knows exactly what is wrong with you but, for financial reasons, she wants to order unnecessary tests. Perhaps she is part owner of the testing company and so is interested in directing business that way.

Both of these examples illustrate relatively simple and common forms of fraud. In both cases, you've been tricked by a professional that you relied on. Frauds such as these are not limited to the professions of medicine and auto repair. They occur in every profession. They represent one of the most common types of white-collar crime, but there are many other types of white-collar crime that we will discuss in this book. For example, violations of environmental regulations, fraudulent accounting practices, exploitation of workers, securities violations, and anti-trust violations are among a host of others that we will consider. Unlike the examples of fraud given here, many of these offenses do not involve a discrete interaction between an offender and a victim. Nevertheless, they are all forms of white-collar crime.

Although there are good reasons to believe that the frauds discussed earlier and other white-collar type crimes are more common now than they have ever been (Weisburd et al., 1991), it would be a mistake to think that white-collar crime is a new invention of the criminal mind. Unfortunately, criminals have engaged in white-collar type crimes literally for thousands of years.

An Historical Look at White-Collar Crime

What we today would call white-collar crime is not new. It's been around a long time. For example, in the fourth century BC, the Greek philosopher Aristotle wrote about embezzlement of funds by road commissioners and other officials. The theft of public money by government officers was a crime under the Athenian constitution, and a jury could sentence someone convicted of such a crime to pay ten times the amount stolen (von Fritz and Kapp, 1950). The Bible and other ancient religious texts condemn a number of exploitative business activities as harmful and counter to the common good. They may not

have been legally defined as crimes, but they were certainly regarded as morally wrong (Geis, 1988). For example, admonitions about the immorality of cheating in the marketplace can be found in Proverbs (11:25): "He that holdeth corn, the people will curse him: But blessing shall be upon the head of him that selleth it." Similarly, Deuteronomy (25:13) declares that "For every one practicing unfairness is abominable to the Lord your God." According to Talmudic scholars, "The Talmud excoriated those who hoarded food in order to resell it at a high price, tampered with weights and measures ... and raised prices unjustly" (Friedman, 1980).

If we move forward several centuries to the late Middle Ages in England, we find that the common law outlawed three business-related activities: regrating, engrossing, and forestalling (Geis, 1988). Each of these activities represented different ways in which someone could try to control the market on important commodities, especially foodstuffs, in order to charge high prices and make exorbitant profits. For example, engrossing involved buying up the entire stock of some commodity, say corn or wheat, in order to resell it at monopoly prices. These sorts of behaviors foreshadow what today we call antitrust offenses (Geis, 1988). Embezzlement by knights and other officers of the King was also a common offense during the Middle Ages (Pike, 1873).

Continuing our journey through time, in the early twentieth century, the noted American sociologist, E. A. Ross, railed against "the criminaloid," that is, powerful business owners and executives who exploit people and manipulate the marketplace out of an uninhibited desire to maximize their profits, all the while pretending to be pious and respectable. As examples of business duplicity combined with the appearance of respectability, he noted that,

The director who speculates in the securities of his corporation, the banker who lends his depositors' money to himself under divers corporate aliases, the railroad official who grants a secret rebate for his private graft, the builder who hires walking delegates to harass his rivals with causeless strikes, the labor leader who instigates a strike in order to be paid for calling it off, the publisher who bribes his textbooks into the schools, these reveal in their faces nothing of the wolf or vulture.

(Ross, 1977:31)

Ross accused these individuals of moral insensibility and held them responsible for the deaths of workers and consumers. Thus, long before the term *white-collar crime* was coined, depredations committed by the rich and powerful in the pursuit of profit and wealth have been recognized and denounced.

Many of the themes that run through this book and that permeate the study of white-collar crime can be found in the historical record. For example, the crime of engrossing involves a perversion of legitimate business activities to serve illegitimate ends and to exploit others. As we will see, a defining feature of white-collar crime is its link to legitimate business or economic activities. Another important theme is the observation that supposedly respectable people, people who are not thought of by others and who certainly do not think of themselves as ordinary criminals, commit these offenses. Aristotle complained about road commissioners and public officials who embezzle public funds, not about ordinary thugs. Also prominent is the idea that these crimes are committed out of greed and a lust for power, not out of desperation or any sort of psychological abnormality. As E. A. Ross argued, the criminaloid's pursuit of profit makes him morally insensitive but not crazy.

But what exactly is white-collar crime?

Defining White-Collar Crime

The person who coined the term *white-collar crime* was the criminologist Edwin H. Sutherland. Throughout his career, Sutherland used several different definitions of white-collar crime. In his most famous book, *White-Collar Crime*, he defined it "as a crime committed by a person of respectability and high social status in the course of his occupation" (Sutherland, 1983). He went on to note that this definition "excludes many crimes of the upper class, such as most of their cases of murder, adultery, and intoxication, since these are not customarily a part of their occupational procedures." In a footnote, he added that the term "white-collar is used here to refer principally to business managers and executives." This definition has provoked both admiration and condemnation for more than 50 years. It continues to be a source of debate and controversy, but we will get to those issues a little later.

Sutherland expanded on and further clarified his conception of white-collar crime in a 1949 entry in the *Encyclopedia of Criminology* (Branham and Kutash, 1949). In the Encyclopedia article, he wrote “the white collar criminal is defined as a person with high socio-economic status who violates the laws designed to regulate his occupational activities.” Sutherland continued that the “white collar criminal should be differentiated, on the one hand, from the person of lower socio-economic status who violates the regular penal code or the special trade regulations which apply to him; and, on the other hand, from the person of high socio-economic status who violates the regular penal code in ways not connected with his occupation.” Note that according to this definition, the auto mechanic whom we described earlier would not be considered a white-collar criminal by Sutherland. We discuss this issue of who is and who is not a white-collar criminal in more detail further, but for now let us return to an examination of Sutherland’s definition.

As a way to define a particular type of crime, both of these definitions are unusual in that they refer to characteristics of the actor. Legal commentators addressing other sorts of crimes typically take great pains to establish clear definitions of the acts that must take place and the state of mind that an individual must possess in order for a crime to be committed, but little is said about the characteristics of the actor. Sutherland’s approach, however, tells us that only certain types of people can commit white-collar crimes, those with “respectability and high social status.” It also specifies that the act must arise out of the course of the actor’s occupation. For Sutherland, both the status of the actor and the occupational location of the act determine whether an illegality is a white-collar crime.

The Controversy Surrounding Sutherland’s Approach

From the start, Sutherland’s approach to white-collar crime provoked criticism and controversy. One issue concerns the legal status of white-collar type offenses. A distinguishing feature of Sutherland’s approach was his willingness to include acts that had been sanctioned through civil or administrative legal proceedings as part of white-collar crime. This decision provoked extensive comment and criticism from legal scholars who contended that only acts that were punished under criminal laws can

rightly be called crime (Tappan, 1947). In Sutherland's view, however, including other types of violations was justified because many civil laws deal with practices that are fundamentally similar to criminal offenses. In addition, many illegal business practices can be sanctioned under either criminal or civil law or both. To exclude offenses that are pursued under civil law arbitrarily limits the range of white-collar offenses. This limitation is especially important in the context of white-collar crime, because the organizations and individuals who commit these offenses often use their political power and economic resources to avoid criminal prosecutions. As many white-collar crime commentators have noted, it is important to investigate how and under what circumstances business activities are criminalized (Cullen et al., 2006.).

Another major point of contention that arose out of Sutherland's approach is whether the offender's social status should be a defining characteristic of white-collar crime. Sutherland included respectability and high social status in his definition, because he wanted to draw attention to the criminality of business groups. He argued that the criminological theories of his day were class-biased and incomplete because they equated crime with lower-class individuals and ignored crime by upper-class individuals. In addition, he was morally outraged by what he regarded as the lenient and preferential treatment afforded to business offenders in the criminal justice system.

Sutherland undoubtedly was correct about the narrowness of criminological theory and the unfairness of the criminal justice system of his day. Nevertheless, including social status and respectability in the definition of white-collar crime created problems for research and analysis. The main problem in using social status as a defining element of crime is that it cannot then be used as an explanatory variable because it is not allowed to vary independently of the crime. Thus, by definitional fiat, white-collar crime researchers are prevented from investigating how the social status of individuals influences the types or the seriousness of the white-collar type offenses they commit. Similar offenses may be committed by corporate executives and by employees at the bottom of the corporate hierarchy, but only the former meet Sutherland's definition of white-collar crime.

Suppose, for example, that a top corporate executive participates in a meeting about his company and learns about a development that will

drive the value of the company's stock way up in the next few weeks. Hoping to take advantage of this inside information, the executive buys a large share of the company's stock while it is still cheap. Suppose also that a low-level typist who transcribes the minutes from the meeting notices the same information and she also decides to buy company stock just as the executive did. Both the executive and the typist have committed what is called *insider trading*, and it is illegal. In Sutherland's eyes, the executive is clearly a white-collar criminal, but what would he do with the typist? Along with other white-collar crime scholars, we believe it does not make sense to focus only on the corporate executive and to ignore the typist. It is important to investigate how social status is related to white-collar crime, just as we investigate how it is related to ordinary street crime. We should not rule out the question of how social status is related to white-collar crime by definitional fiat. Indeed, a major theme of this book is that social status is important precisely because it influences access to opportunities for white-collar crime. People with high social status may also be able to influence the content of the laws that address their behavior and the way in which law is administered by criminal justice and regulatory agencies.

We need to pay attention to status not only in regard to how it influences access to opportunities but also in regard to who has it and who doesn't. Those who don't have high social status have fewer opportunities to commit white-collar offenses. In the example given earlier, the executive was a man. Although women have made great strides in the corporate world over the past few decades and there are more than a few female top executives, they are still underrepresented in leadership positions in major corporations. According to a survey by Catalyst, a nonprofit research and advisory organization working to expand opportunities for women, in the year 2005, women constituted just 16.4 percent of officers in leading corporations (Catalyst, 2006). As we show later, because of gender stratification in the labor force, women do not commit as many or as serious white-collar crimes as men (Daly, 1989). The same is true of African-Americans, Hispanics, and other peoples of color. They, too, are underrepresented in leadership positions, and their access to white-collar crime opportunities is equally limited. White-collar crime opportunities are differentially distributed by gender, race, ethnicity, and status.

Including social status in the definition of white-collar crime also rules out the possibility of exploring how variation in the status of offenders influences societal reactions to their offenses. For example, it is important to investigate whether insider trading by corporate executives and by clerical staff are treated the same or differently by authorities. Are small businesses that engage in consumer fraud treated the same in court as multinational corporations who cheat the public? In order to investigate these issues, white-collar crime must be defined in a status-neutral manner.

Offender-Based Approaches to Defining White-Collar Crime

Sutherland's definition is the most well-known and influential example of what has been called the *offender-based* approach to defining white-collar crime. Offender-based definitions emphasize as an essential characteristic of white-collar crime the high social status, power, and respectability of the actor. Despite its shortcomings Sutherland's offender-based approach has remained popular. Numerous attempts have been made to define the concept in a manner that is faithful to Sutherland's intentions but that clarify or expand upon his definition. Albert J. Reiss and Albert D. Biderman proposed that "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" (Reiss and Biderman, 1981). At a 1996 workshop sponsored by the National White-Collar Crime Center's Research and Training Institute, a consortium of white-collar crime scholars proposed an operational definition to which Sutherland probably would not have objected. The group defined white-collar crime as "illegal or unethical acts that violate fiduciary responsibility or public trust, committed by an individual or organization, usually during the course of legitimate occupational activity, by persons of high or respectable social status for personal or organizational gain" (Helmkamp, Ball, and Townsend, 1996). These definitions have several elements in common with Sutherland's approach. They each include the social characteristics of the offender, they locate offenses in the offender's occupation, and they include non-criminal acts.

Another Way of Looking at White-Collar Crime: Offense-Based Definitions

Another approach to defining white-collar crime is called *offense-based*, because the definition is based on the nature of the illegal act. In 1970, Herbert Edelhertz, then an official at the U.S. Department of Justice, proposed a highly influential offense-based definition of white-collar crime. He defined white-collar crime as “an illegal act or series of illegal acts committed by non-physical means and by concealment or guile to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage” (Edelhertz, 1970). This definition defines white-collar crime according to the means by which the offense is carried out—specifically, non-physical means that involve concealment or guile. Any illegal act or series of acts committed by any person that meets these formal requirements is considered white-collar crime.

Edelhertz (1970:19–20) went on to identify four basic types of white-collar crime. These include:

1. “Personal Crimes: Crimes by persons operating on an individual, *ad hoc* basis, for personal gain in a nonbusiness context. For example, individual income tax violations and credit card frauds.
2. Abuses of Trust: Crimes in the course of their occupations by those operating inside businesses, Government, or other establishments, or in a professional capacity, in violation of their duty of loyalty and fidelity to employer or client. For example, embezzlement, commercial bribery, and kickbacks.
3. Business Crimes: Crimes incidental to and in furtherance of business operations, but not the central purpose of such business operations. For example, antitrust violations and food and drug violations.
4. Con Games: White-collar crime as a business, or as the central activity of the business. For example, advance fee swindles and home improvement schemes.”

Another example of the offense-based school of thought on defining white-collar crime was provided in 1990 by Susan Shapiro. Shapiro (1990) argued that the essential characteristic of the acts that are commonly called *white-collar crimes* is that they involve the violation or abuse of trust. She proposed that the concept of white-collar crime

be liberated by “disentangling the identification of the perpetrators from their misdeeds” (Shapiro, 1990). In Shapiro’s view, offender-based definitions create an imprisoning framework. This framework leads scholars to misunderstand the structural sources of white-collar offenses, the problems they create for social control agencies, and the nature of class bias in the justice system. Another prominent white-collar scholar proposes that white-collar crime be defined as “a violation of the law committed by a person or group of persons in the course of an otherwise respected and legitimate occupation or financial activity” (Coleman, 1989). This definition does not refer to the status or respectability of the actor and expands the location of white-collar crime so as to include non-occupational but presumably legitimate financial activities. A similar definition has been proposed by Jay Albanese, who argues for this formulation: white-collar crime is “planned or organized illegal acts of deception or fraud, usually accomplished during the course of legitimate occupational activity, committed by an individual or corporate entity” (Albanese, 1995).

Offense-based definitions have proved popular with researchers for several reasons. Because no mention is made of the social status of the actor or the social location of the act, both status and location are free to vary independently of the definition of the offense and can be used as explanatory variables. Researchers who use an offense-based definition have the freedom to explore how variation in the social status of the actor influences characteristics of the white-collar crimes committed and how the status of the actor influences societal reactions to offenses. Researchers can also investigate whether white-collar offenses committed in occupational settings differ from those committed outside occupational settings. Finally, offense-based definitions make it easier for researchers to draw samples of white-collar offenders from official data sources, such as court conviction records. Researchers need only identify a set of statutory offenses that meet certain formal criteria—for example, offenses that are not physical and that are based on deception. Then, it is just a matter of sampling individuals convicted of those offenses. A number of well-regarded studies published in the 1980s and 1990s used this strategy to identify and investigate white-collar offenders in the U.S. federal judicial system (Benson and Walker, 1988; Hagan and Nagel, 1982; Wheeler, Weisburd, and Bode, 1982).

Despite its popularity with some researchers, the offense-based approach to white-collar crime raises troubling issues for many other white-collar crime scholars (Geis, 1996). The very ease with which offense-based definitions can be used to draw samples becomes a trap for investigators, leading them to miss or ignore the most important aspects of the white-collar crime phenomenon. Investigators who use offense-based definitions often end up studying the relatively minor misdeeds of ordinary people of very modest financial means who somehow become caught up in the criminal justice system. Indeed, if you construed Edelhertz's definition loosely, it would permit an alcoholic who conned a friend out of a bottle of wine to claim the status of white-collar criminal. Even more important, with its focus on money and property, Edelhertz's definition turns attention away from the types of white-collar crime that do physical harms to people (Braithwaite, 1985). For example, illegally disposing hazardous waste into the environment, manufacturing dangerous products, and causing the death, injury, or illness of workers via unsafe working conditions are among the most serious white-collar crimes. Such crimes rarely appear in studies that follow Edelhertz's approach to defining white-collar crime.

Offense-based samples drawn from the federal judicial system, which supposedly has a larger proportion of white-collar clients than is found in state courts, tend to be composed primarily of middle-class individuals who have committed banal and simplistic offenses (Wheeler et al., 1988a). The powerful corporations and corporate executives that originally provoked Sutherland's interest are largely absent. Offense-based approaches also tend inevitably to draw researchers toward the study of acts that have been officially defined as illegal. As a result, powerful individuals and corporate actors who are able to avoid official labeling in the first place never appear in the resulting samples. Thus, the major criticism of the offense-based approach is that in practice it misses the crimes of the powerful who simply sidestep the criminalization process. The very people that Sutherland originally sought to bring to the attention of criminologists are ignored. Substituted in their place are small time con men and cheating welfare moms (Daly, 1989).

Reconsidering the Two Approaches

The critics of Edelhertz's offense-based approach to defining white-collar crime make an important point. In practice, the use of this approach has often (but not always) resulted in studies that do not include the very offenses and offenders that drew Sutherland's attention in the first place. As John Braithwaite put it, perhaps a bit too strongly, the "practical consequences for empirical research have been that most white-collar criminals end up having blue collars" (Braithwaite, 1985). In addition, those who have used Edelhertz's approach have tended to ignore white-collar crimes that impose physical harm and violence on their victims. Both the manufacture of dangerous products and the maintenance of unsafe working environments are important types of white-collar crime.

We agree that it is important to avoid reducing the study of white-collar crime to small-time frauds by home repairmen and employee theft by retail clerks. But we note that this "practical consequence," as Braithwaite calls it, is just that—a practical consequence. It is not a logical consequence of the offense-based approach. Rather, it is a consequence of how this approach has been used by some researchers (Hagan, Nagel (Bernstein), and Albonetti, 1980; Weisburd et al., 1991; Wheeler et al., 1982).

There is nothing in the offense-based approach to defining white-collar crime that prevents researchers from examining the offenses of people with high social status or respectability or who hold positions of "significant power, influence, or trust." Suitably motivated researchers could use an offense-based approach to focus on the white-collar offenses of high-status individuals who occupy positions of power, influence, and trust. Likewise, suitably motivated researchers could examine how deceit and guile are used to manufacture dangerous products and to maintain unsafe workplaces for business advantage, or to commit civil and regulatory offenses. That this often does not happen reflects a failure on the part of researchers, not a fundamental weakness of the offense-based approach. The key point to keep in mind is that regardless of the characteristics of the individuals involved, white-collar crimes are committed using particular techniques. That is, they rely upon a certain *modus operandi*. The characteristics of the individuals

who commit these offenses are important insofar as they influence access to the opportunities to use these techniques. As we argue throughout this book, many of the characteristics that are part of offender-based definitions (e. g., high social status, respectability, and elite occupational positions) are indeed important precisely because they provide offenders with access to opportunities for white-collar crime.

The idea that white-collar crime involves particular techniques was well known to Sutherland. Throughout his major works on white-collar crime, he describes the techniques for specific misdeeds, as in this passage taken from his Presidential address to the American Sociological Society in 1939:

These varied types of white-collar crimes in business and the professions consist principally of violation of delegated or implied trust, and many of them can be reduced to two categories: (1) misrepresentation of asset values and (2) duplicity in the manipulation of power. The first is approximately the same as fraud or swindling; the second is similar to the double-cross.

(1940:3; see also 1941:112, and 1949:152–158)

As Sutherland certainly understood, access to these techniques can be greatly facilitated by holding particular occupational positions. In a discussion of financial crime, he noted that “many corporate executives make strenuous efforts to secure positions in which they may have an opportunity to violate the trust for which they are legally responsible” (Sutherland, 1949:153–154). We would add to Sutherland’s observation the caveat that both race and gender influence access to these lucrative positions. All other things being equal, white males are more likely to have access to these positions than women and racial or ethnic minorities.

The offender-based and offense-based approaches to defining white-collar crime are not contradictory or mutually exclusive. Rather, they simply emphasize different aspects of a general empirical regularity involving the characteristics or social positions of individuals and the types of offenses that they tend to commit. The techniques of white-collar offending tend to be used more by people who have high social status and who hold certain occupational positions than they are by people who do not have these characteristics. This is not to say that people

of low social status who work in menial jobs or who are unemployed cannot use misrepresentation and duplicity to take advantage of others. Of course, they can. But they have much less opportunity to do so than people of high social status who hold positions of significant trust or power. Similarly, members of the middle and upper social classes could commit conventional property crimes, such as burglary and robbery, but they generally do not because they have access to other easier and less risky ways of stealing.

The social and occupational characteristics of white-collar offenders are important in another way as well. These characteristics are related to the seriousness of the offenses that offenders commit. In regard to criminal offenses, seriousness has two primary dimensions: the harmfulness of the offense and the blameworthiness of the offender (Wheeler et al., 1982; Wheeler, Mann, and Sarat, 1988b). The white-collar offenses of high-status individuals who hold positions of power in large organizations tend to be more serious than those of other types of individuals. Consider, for example, an offense such as the illegal disposal of hazardous waste. It is true that many types of small businesses generate hazardous waste and then illegally dispose of it using midnight dumpers (Epstein and Hammett, 1995; Rebovich, 1992). As the name implies, midnight dumping involves the illegal disposal of hazardous waste under the cover of darkness somewhere where it is not supposed to go, such as an abandoned building or a vacant lot. These businesses often are owned by people who do not wear suits and ties and who operate on very thin profit margins. Examples include the electroplating, carpet cleaning, dry cleaning, and furniture-refinishing businesses. The potential harm to the environment posed by the illegal practices of small businesses is a serious problem. Indeed, some evidence from the Environmental Protection Agency (EPA) suggests that the environmental threat posed by all small businesses taken together may even exceed that posed by large organizations, simply because there are so many small businesses and they are difficult to track. In addition, regulations have lessened industrial point source pollution from larger companies (Vandenbergh, 2001). Nevertheless, the danger represented individually by your local dry cleaner pales in comparison to the danger that arises when large organizations illegally dispose of hazardous waste. The examples here are numerous. Consider, for instance, the Hooker Chemical Corporation

(Tallmer, 1987), which was responsible for the infamous Love Canal; or Rockwell International company, which contaminated Rocky Flats, Colorado with nuclear wastes (Rosoff, Pontell, and Tillman, 2006). The list could go on (for many examples, see Chapter 4 in Rosoff et al., 2006).

The important point to recognize is that environmental offenses (and, obviously, many other types of white-collar offenses) are committed by the high-status executives and managers of powerful multinational corporations and by the economically struggling owners of small businesses (Barlow, 1993). Of course, we should not overlook all the businesses that fall somewhere between these two extremes. They are involved as well. Adopting a research strategy that ends up focusing only on small business owners is a mistake, but it is also a mistake to focus exclusively on multinational corporations. Similar offenses may occur at all levels of business activity.

We must be careful, though, not to overstress the notion of similarity too much. Just because similar offenses may occur across a broad range of levels of economic organization does not mean that they necessarily have the same causes and consequences. Nor does it mean that they can be controlled in the same way. That sort of one-size-fits-all type of thinking inevitably misses important aspects of the phenomenon of white-collar crime. The causes and consequences of white-collar crime are matters that must be settled through empirical investigation. Likewise, identifying the best response to white-collar crime requires careful analysis of the cost and effectiveness of different types of control strategies.

Concluding Thoughts on Defining White-Collar Crime

The definition of white-collar crime remains a matter of contention. Though we hope that our proposed reconciliation of the two definitional approaches will be seen as reasonable, we are not foolish enough to think that we have settled the matter once and for all. Criminologists should never forget Sutherland's fundamental insight that the upper social classes are not free from crime. In the course of their occupations, people of respectability and high social status commit serious crimes every day, even though they may never be caught or convicted. To

ignore this reality is simply to misunderstand the problem of crime in the modern world. Yet, we believe it is possible to remain true to Sutherland's insight while at the same time adopting a more expansive perspective on the problem of crime in the modern world. In the chapters that follow, we often deal with offenders who do not fit the criteria imposed by Sutherland's offender-based definition. This is not because we think that Sutherland's definition is wrong. Rather, it is because, as we noted earlier, it is simply a fact that people of middle and lower social status can and do use the techniques identified by Sutherland himself—misrepresentation and duplicity—to commit illegal acts just as people of high social status do. Similarly, small businesses can engage in illegal activities just as national and multinational corporations do. What we wish to do is to explore how these variations in social status and organizational size influence the type, seriousness, and patterning of offenses.

WHO IS THE WHITE-COLLAR OFFENDER?

Introduction

In his definition of white-collar crime and in his many writings on the subject, Sutherland described the white-collar offender as a person of respectability and high social status who commits an offense during the course of his or her occupation. If we follow Sutherland's approach, then the question posed in the title of this chapter is already partially answered. The white-collar offender is a respectable person of high social status. Of course, what Sutherland meant by "respectable" and "high social status" is not completely clear, but he did indicate that by white-collar he meant to refer to "business managers and executives" (Sutherland, 1983). If we thought about it for a bit, we could probably come up with definitions for the terms *respectable* and *high social status* that would make sense conceptually. To answer the question, then, who is the white-collar offender, we would have to identify individuals who fit our definitions and who engage in occupationally related crime. We would want to know what it is that distinguishes respectable high-social-status people who are honest from those who are dishonest. Sutherland had a theory about the answer to this question. Other theories have been put forward by other scholars. We discuss these theories in the next chapter, but for now, we want to consider what happens if we don't use Sutherland's definition.

Suppose that instead of following Sutherland we defined white-collar crime using Edelhertz's approach—that is, as a property crime

committed by non-physical means and by concealment or deception. How would taking Edelhertz's approach affect the answer to the question, who is the white-collar offender? If we follow Edelhertz's approach, our problem boils down to this: what do we know about the people who commit property crimes by non-physical means and through the use of concealment or deceit?

Thanks to a series of studies that began at Yale University in the late 1970s and continued into the 1990s, we actually know quite a lot about these people. In the mid-1970s, a group of researchers led by Stanton Wheeler of Yale University Law School received funding from the National Institute of Justice (NIJ) to conduct a study on the sentencing of white-collar offenders in the federal judicial system. Although officials at the NIJ were primarily interested in sentencing, they had the foresight to permit the researchers to investigate a broad set of issues and questions that extended far beyond the question of who goes to prison and who does not (Weisburd et al., 1991:xiii). From these investigations, an interesting picture of the people who commit crimes of deception has emerged. As we will show, some of these people clearly are white-collar offenders in Sutherland's sense of the term, but many of them are not.

The Yale Studies on White-Collar Crime

The Yale studies on white-collar crime encompassed several different types of projects. In one study, federal judges were interviewed to learn how they thought about the sentencing of white-collar offenders (Wheeler et al., 1988). In another part of the project, Kenneth Mann interviewed white-collar defense attorneys about how they did their work (Mann, 1985). Another member of the team, Susan Shapiro, delved into securities offenses. She provided a detailed report on how these offenses are committed and how they are discovered, investigated, and sanctioned by the Securities and Exchange Commission (Shapiro, 1984, 1985). We will have occasion to look into all of these studies later, but now we want to turn our attention to the studies that focused directly on offenders (Weisburd et al., 1991; Weisburd and Waring, 2001; Wheeler et al., 1988).

A good place to look for people who commit white-collar type crimes is the U.S. federal court system. The Yale researchers began

by identifying eight offenses in the federal criminal code that most scholars and laypeople would agree were white-collar type crimes. For our purposes, what is important is that these are offenses that are committed by concealment and deception rather than brute physical force. The eight offenses were securities violations, antitrust violations, bribery, bank embezzlement, mail and wire fraud, tax fraud, false claims and statements, and credit- and lending-institution fraud. All of these offenses fit Edelhertz's definition, and we believe that in many cases Sutherland would have no objections, either.

Obviously, the list does not include every white-collar crime in the federal code. Many others could have been used, and this is an issue to which we return later. Nevertheless, we think the researchers are correct in claiming that this set of offenses represents "a broad and heterogeneous view of white-collar criminal activity that is prosecuted in the federal courts" (Weisburd et al., 1991:11).

Having identified a good collection of white-collar crimes, the researchers next turned to finding the white-collar criminals. They found them by reviewing records on convictions in seven federal district courts. The districts and their major cities were Central California (Los Angeles); Northern Georgia (Atlanta); Northern Illinois (Chicago); Maryland (Baltimore); Southern New York (Manhattan and The Bronx); Northern Texas (Dallas); and Western Washington (Seattle).

The researchers identified all of the people who had been convicted of any one of the eight offenses named earlier. From here on, we will call these the *criterion* offenses. From this pool of individuals, the researchers then selected a sample of offenders from each of the criterion offense categories in each of the seven districts. The total sample included 1,094 offenders.

White-collar scholars have always taken it for granted that white-collar offenders are not anything like ordinary street criminals. We assume that white-collar offenders are better educated and more likely to be employed than common street criminals. We assume that white-collar offenders do not grow up in poverty-stricken families and that when they were children their parents did not beat or abuse them, as is unfortunately the case with many common criminals. Yet, very few studies have actually sought to compare white-collar and common criminals on their demographic and social characteristics. The Yale

researchers hoped to do just that. So, in addition to their sample of white-collar offenders, they also selected a sample of 210 individuals who had been convicted of nonviolent financially oriented common crimes. This comparison sample of common criminals included individuals who had been convicted of either postal theft or postal forgery.¹ These federal offenses are similar to the better-known common property crimes of burglary and larceny. Burglary and larceny, however, are crimes that are governed by state rather than federal law, so they could not be used by the researchers for making comparisons.

With their sample in hand, the researchers set out to learn as much as they could about the offenders and their offenses. Most of the information they used came from a document called the pre-sentence investigation report (PSI for short). The PSI contains extensive information about individuals in the federal judicial system. A PSI is prepared by a federal probation officer whenever an offender is convicted in federal court. It does not matter whether the conviction is the result of a verdict at trial or a plea by the defendant. Federal judges use PSIs when they make decisions about sentencing. As the majority of cases in the federal system are settled by pleas, judges often do not have an opportunity to learn much about the offender or the offense prior to sentencing. The PSI is designed to help judges overcome this information shortage. It helps the judge learn in detail about the offense and the offender.

Regarding the offense, the PSI informs the judge about the official charges to which the defendant has pled guilty (e.g., one count of violating 18 USC 287, which is a federal statute governing false claims or statements). But in addition to the official charge, the PSI also contains a “defendant’s version of the offense” and an “official version of the offense.” The defendant’s version is just that: it is the defendant’s version or explanation of what happened. Some defendants write these statements themselves, but many rely upon their lawyers to help them craft a statement that won’t be offensive to the judge and that may help them get a more lenient sentence (Rothman and Gandossy, 1982). As a sidelight, we note that compared to the typical street offender, the people who commit white-collar type crimes often have an advantage at this stage of the process. Because of their wealth and status, they or their companies can afford to hire very skilled attorneys to represent them (Mann, 1985). Thus, status influences not only opportunities to commit

white-collar crimes; it may influence official reactions to white-collar law breaking. But to return to our discussion of the defendant's version of the offense, defendants not surprisingly often go to great lengths to present themselves in favorable terms. The connection between what really happened and the defendant's *version* of what happened is always questionable.

For our purposes, the official version of the offense is more important and useful. It is supposed to present an unbiased and objective description of the acts that led to the filing of criminal charges against the defendant. The official version is prepared by the probation officer, often with help from the prosecuting attorney or the law enforcement agents who investigated the case. It usually contains a detailed description of the offense, including information on what was done, who was involved, who was harmed, how much money was lost, how complex or simple the offense was, and how long it lasted. This descriptive information about the offense tells us much more about what really happened than does the formal charge. The Yale researchers used the official version of each offense to determine its degree of seriousness. They were then able to compare the characteristics of the offenders to the seriousness of the offenses they committed.

In addition to information on the offense, the PSI also contains information about the defendant. Much of this information focuses on the defendant's prior criminal record, including previous arrests, convictions, and sentences. Obviously, these matters are important for judges. They want to know whether they are sentencing a first-time offender or a habitual criminal. However, the PSI also can tell us about the defendant's social, economic, and demographic background. Typically, probation officers will describe the defendant's age, race, gender, family of origin, marital history, educational attainment, employment history, medical and psychological condition, financial status, place of residence, religious preferences and activities, alcohol and drug use, and standing in the community. Not all of these topics are covered in detail in every PSI, but most of them receive at least some attention from probation officers. The idea is to give judges an idea of who they are dealing with so that they can render an appropriate sentence.

For our purposes, the PSI is a good source of data. We can use it to find out who commits white-collar type crimes. We can compare these

people to those who commit common street crimes. In short, we can investigate many important questions about white-collar offenders and white-collar crimes. Who commits the most serious crimes—people of high social status or those of low social status? Are the people who commit white-collar crimes really different from those who commit run-of-the-mill common crimes? If so, how are they different?

Now that we have an idea of what the Yale researchers did and how they did it, we are almost ready to turn to their results. However, first we need to make sure that we are aware of what we may be missing.

The federal court system is certainly a good place to find people who have been convicted of white-collar type crimes, and the PSI is a unique source of data about convicted offenders, but what about offenders who do not get caught? Like all research methodologies, the one used by the Yale researchers is not perfect, as they were well aware (Weisburd et al., 1991:17–21). The researchers acknowledged four shortcomings in their research design.

First, they studied only eight federal offenses. There are many other federal offenses that could conceivably be called white-collar crimes. It is possible that if the researchers had included a different mix of offenses, their results may have changed. For example, neither environmental violations nor violations of workplace safety laws were included in the study, yet these are exceedingly important forms of white-collar crime.

Second, at the time of the study there were 91 federal district courts. The researchers studied only seven. These seven were selected because they were large and the researchers thought that they would be likely to have a lot of white-collar crime cases. As with the mix of offenses, it is possible that had a different mix of districts been selected, the results might have changed as well. Indeed, one study suggests that sentencing practices may vary by the size and case mix of the district. Judges in smaller districts with fewer white-collar cases apparently handle them differently than their counterparts in the big urban districts (Benson and Walker, 1988).

Taken together, the first two shortcomings raise the possibility that if we were looking at a different sample, we might see a different picture. For example, it is certainly possible that the people who commit bank embezzlement in New York City are not like those who embezzle in, say, Amarillo, Texas. Whether a sample is representative of all the

possible cases from which it is drawn is a common problem in social science research. The best way to address this shortcoming is to look at more than one sample. If the results from different samples and studies converge, then we can have much more confidence in them than we could from a single observation point. Happily for us, at the same time that the Yale researchers were conducting their study, several other investigations of white-collar offenders in the federal system were also under way (Benson and Walker, 1988; Benson and Moore, 1992; Hagan et al., 1980). We won't describe these studies in detail now, but we will use them later as a check on the results of the Yale project.

The last two shortcomings are potentially more serious. They both involve the types of people and offenses that we end up looking at if our sampling strategy is restricted to convicted offenders. By including only cases that resulted in a defendant's being convicted in federal criminal court, the study missed all of the white-collar cases that were handled in other ways, such as, for example, in civil courts or in regulatory proceedings. In other words, the study missed all of the individuals whose cases could have been handled in criminal court but for some reason were not. This is not an insignificant issue. The picture that we get of the white-collar offender depends entirely on who gets drawn into the criminal justice system. If the process by which people are drawn into the system is biased in some way, then our image of the white-collar offender will be biased in just that way as well.

For example, imagine that at the time of the Yale study two bank employees were caught embezzling by their employers. One of the individuals was an older white man who was a bank vice president while the other was a young black woman who was a teller. Further suppose that for some reason, the white man's employer decides to fire the man rather than to press charges. This apparent generosity on the part of the employer is not as unlikely or outlandish as it may seem at first. The bank owners may wish to avoid the embarrassment of having the bank officer's name in the paper, which would not reflect well on the bank. Who wants to put money in a bank that apparently has crooks in leadership positions? On the other hand, the black woman's employer calls the local U.S. District Attorney, who files charges against the woman in federal court. The woman is eventually convicted of bank embezzlement. You can see the problem. Our two bank embezzlers differ

dramatically in their sociodemographic characteristics, but only one can possibly turn up in the Yale study. If something like this happens often, then using conviction records as our data source will give us a distorted view of the characteristics of white-collar offenders.

How often do things like this happen? We don't really know. While there are many studies that inform us about how people are treated once they get into the criminal justice system, far fewer studies have investigated how people get there in the first place. In an ideal world, people would be drawn into the system based on the evidence against them and the seriousness of the offenses that the police think they have committed. But we don't live in an ideal world, especially when it comes to white-collar crime. The few studies that are available on how white-collar offenders get into the criminal justice system suggest that other factors besides evidence and seriousness often play a role. For example, Susan Shapiro studied how the Securities and Exchange Commission (SEC) makes enforcement decisions. She found that the accused person's status and organizational position influenced whether the SEC referred suspected securities violators to federal prosecutors for trial or handled them internally through administrative proceedings (Shapiro, 1984). Oddly enough, for reasons that are too complex to go into now, the people who were accused of less serious securities violations were more likely to end up in court than those who were accused of more serious offenses. Of course, Shapiro's is only one study, and the SEC is only one regulatory agency. Nevertheless, her findings should serve as a cautionary warning that we have to be aware of the limitations of court records as data sources.

The final shortcoming of using court convictions to identify white-collar offenders also relates to the issue of who gets into the criminal justice system in the first place. By using convictions as our criterion, we miss all of those offenders who avoided conviction. Obviously, this includes those who are acquitted at trial even though they are really guilty. This is not a big problem, because acquittals of any sort—correct or incorrect—actually do not happen very often. So, we can be pretty safe in ignoring this source of bias. More significantly, however, we will also miss all those offenses that are never detected in the first place. In other words, conviction records give us only offenders who are unlucky or careless enough to get caught. For example, to return again to our two

bank embezzlers, suppose that because of his position the bank vice-president is able to cover up his offense so that it is never discovered. If bank vice-presidents often get away with embezzlement while bank tellers rarely do, then conviction records will present a biased picture of who commits bank embezzlement. As we will see at many points in this book, detection is a big problem in the study and control of white-collar crime. It is always debatable whether the offenses and offenders whom we detect are the same as the offenses and offenders who escape detection.

On the other hand, we also don't really know whether the offenses that go undetected or that do not result in court convictions really are all that much different from those that do come to light. Some white-collar scholars argue that offenders of high social status and economic power use these advantages to avoid prosecution (Coleman, 1989; Reiman, 1979). Opposing this view are studies that suggest that prosecutors actually like to go after the "big cases," so to speak, and are eager to take on cases with high profile defendants (Benson, Cullen, and Maakestad, 1990; Katz, 1980). For example, when he was attorney general of New York, Elliot Spitzer made a career out of taking on very high-profile white-collar cases (Cullen et al., 2006:329-330). In one of the few studies that looked very closely at which defendants end up in court and which do not, Kenneth Mann found that the underlying criminal conduct of the defendants who went to trial versus those who went free was usually quite similar. What mattered were small variations in the evidence that investigators and prosecutors had to work with (Mann, 1985). As the Yale researchers note, there is no way of knowing for sure whether defendants who are detected are the same as those who avoid detection. Nevertheless, we agree with them that we can learn a lot about white-collar crime by closely examining convicted defendants and their offenses.

Taken together, the four shortcomings of the Yale study add up to this: We can't be entirely positive that the offenders and offenses in this study represent all white-collar crimes. The reasons for our uncertainty are that (1) a different mix of offenses might produce different results; (2) a different mix of districts might produce different results; (3) some offenders who could have been included in the study were not because their cases were handled in other ways; and (4) offenders who are convicted may not be

the same as those who avoid detection in the first place. These are not trivial shortcomings, but we shouldn't overstate their importance. We can address the first two by looking at other studies of federal offenders that use different offenses and different districts. Regarding the last two shortcomings, probably the best we can do is to acknowledge that what we see may not be all there is. Nevertheless, the Yale studies on white-collar crime at least can show us what convicted white-collar offenders look like. We will have to leave it to others to find out whether those who somehow avoid conviction really are all that much different.

The Social and Demographic Characteristics of White-Collar Offenders

Anthony Fastow, Kenneth Lay, Bernard Ebbers, Richard Koslowski, Martha Stewart—if you've been following the news the past few years, these names and most likely the faces are familiar to you. These are high-profile people who have been accused and in some cases convicted of white-collar crimes. Anthony Fastow was the former chief financial officer for Enron. He pled guilty to accounting fraud in 2004 and was sentenced to federal prison. His former boss, Kenneth Lay, was convicted of fraud in 2006. Bernard Ebbers was the former head of World Com. He has been convicted of accounting fraud. Richard Koslowski was the former head of Tyco International, a large conglomerate. He was convicted of stealing billions of dollars from his company. And finally, there is Martha Stewart, the most famous of them all. She was convicted of lying to federal authorities concerning a stock transaction and was sentenced to serve 5 months in a federal correctional institution. These individuals represent the archetype of the white-collar offender. They are rich, white, and well-educated adults. At the time that they committed their offenses, they held powerful leadership positions in major corporations. Although they were not all born wealthy, none of them came from what could be called a disadvantaged or troubled family background.

It would be hard to find a group that more closely fits the common conception or stereotype of the white-collar offender than these people. You would never mistake these people for common criminals. Is this what most of the people who are convicted for white-collar crimes are like? The answer is partly yes and partly no.

Table 2.1 Demographic, education, and employment characteristics of white-collar offenders, common criminals, and the general public (adapted from Tables III and IV in Wheeler et al., 1988)

	COMMON CRIMINALS	WHITE-COLLAR CRIMINALS	GENERAL PUBLIC
Sex (Male)	68.6%	85.5%	48.6%
Race (White)	34.3%	81.7%	76.8%
Age (Mean Age)	30	40	30
Education			
High School Graduates	45.5%	79.3%	69.0%
College Graduates	3.9%	27.1%	19.0%
Employment			
Unemployed	56.7%	5.7%	5.9%
Steadily Employed	12.7%	58.4%	Not available

The “partly yes” part of the answer relates to the age, race, and sex characteristics of white-collar offenders and to their employment status and level of education. The data in Table 2.1 are taken from the Yale study (Wheeler et al., 1988). It compares the white-collar criminals in the sample to the common criminals and to general population of the seven districts in which the study was conducted.

Let’s look first at the gender, race, and age characteristics of the people who were convicted of white-collar crimes and compare them to the general public. The most striking and obvious fact is that the white-collar offenders are overwhelmingly male. About half of the general public is male, but nearly nine of ten white-collar offenders are male. The white-collar offenders also are more likely to be white (81.7%) than are members of the general public (76.8%), but the over-representation of whites in the sample is only little more than we would expect by chance. Finally, the average age of the persons convicted of white-collar crimes is 40, a good bit older than the average age of 30 of the general public in these districts. Compared to the general public, then, the people who are convicted of white-collar crimes are older, a bit more likely to be white, and much more likely to be male.

How do the white-collar criminals compare to the people who commit nonviolent common crimes? Here there are substantial differences, especially in regard to race. About eight of ten white-collar criminals are white (81.7%), but only about one of three common criminals is white (34.3%). To look at the data from the non-white perspective, we can say that about two-thirds of the common criminals are non-white

(65.7%). Social scientists would put it this way: non-whites are grossly over-represented among common criminals and under-represented among white-collar criminals. In contrast, whites are grossly under-represented among common criminals and over-represented among white-collar criminals.

There are other differences as well. The persons convicted of nonviolent common crimes are on average 10 years younger than the white-collar criminals. It is also clear that common crime is more of an equal opportunity employer than is white-collar crime. More than 30% of the common criminals are female as compared to less than 15% of the white-collar criminals. Overall, though, women are much less likely than men to commit any sort of crime.

Now we turn to the “partly no” part of the answer to our question regarding how well the people described earlier represent white-collar offenders in general. Advanced education and steady employment are two of the standard markers of success in our society, and they are two characteristics that are commonly associated with white-collar criminals. The data presented in Table 2.1 on education and employment need to be examined closely. In some ways, it suggests that we may need to rethink the status part of the image of the white-collar offender. As should come as no surprise, white-collar offenders are indeed much more likely to be well-educated than common criminals. Almost 80% of the white-collar offenders have at least graduated from high school versus less than half of the common criminals. More than one-fourth of the white-collar criminals are college graduates (27.1%) as compared to less than 5% of the common criminals (3.9%).

In one sense, these results are exactly what we would expect. The white-collar offenders are more highly educated than the common criminals. However, in another sense, these results do not fit the standard view of the white-collar offender. Most of the white-collar offenders are *not* highly educated. More than 70% of them are *not* college graduates. It is true that white-collar offenders are more likely to have graduated from college than members of the general public (27.3% versus 19.0%, respectively), but the difference is not huge. In regard to education, then, the white-collar offenders are better off than the public in general, but it would not be correct to say that they are always highly educated.

With respect to the standard view of white-collar offenders, the finding that most of them do not have college degrees is important. Advanced education is an indicator of high social status. Offenders who have not completed a college education lack one of the badges of high social status that Sutherland and those who adopt his approach often identify with white-collar criminals.

The results on employment status also call into question the standard image of the white-collar offender. As was the case with education, white-collar and common criminals differ dramatically in employment status. More than half (56.7%) of the common criminals were unemployed at the time that they committed the criterion offense that brought them into federal court. In contrast, only 5.7% of the white-collar offenders were unemployed at the time of their offenses. This percentage corresponds almost exactly with the unemployment rate for the general public (5.9%). So far, so good. Again, this is what we would expect. It is not surprising to find that most common criminals are unemployed. We expect them to live in disadvantaged circumstances. But the picture gets more puzzling when we look at the rate of “steady employment” for the white-collar offenders. In the Yale study, steady employment meant that the individual had had uninterrupted employment during the 5-year period preceding the conviction. Fewer than 60% of the white-collar offenders had been steadily employed (58.7%) prior to their convictions. Granted, that looks pretty good compared to the common criminals, who had a steady employment rate of only 12.7%. But it also means that *more than* 40% of the white-collar offenders were *not* steadily employed prior to their convictions.

It is easy to get lost in numbers and tables and, as the old saying goes, to miss the forest for the trees. So, let’s step back and try to summarize the main conclusions that we can draw from Table 2.1. First, as expected, the typical white-collar offender is a middle-aged white male. Second, as expected, on average white-collar offenders are better educated and more likely to be employed than common criminals. Third, however, and *not* as expected, most white-collar offenders have only a high school degree, and a substantial proportion of them cannot count on steady employment prior to their offenses. Thus, the people convicted of white-collar crimes in federal courts are indeed different from common

criminals, but on average they do not appear to be social elites. They do not appear to have high social status.

The data presented in Table 2.1 apply to all of the white-collar offenders in the Yale study considered as a group. But, recall that the Yale researchers selected individuals who had been convicted of eight different types of white-collar crimes, ranging from antitrust violators to bank embezzlers. It takes only a moment's thought to realize that the people who commit antitrust violations may not be the same as the people who commit bank embezzlement. Although we know that on average white-collar offenders are not like common criminals in terms of age, race, employment, and education, this doesn't mean that therefore all white-collar offenders are alike. There may be substantial variations in the social characteristics of white-collar offenders, and these variations may be linked to the types of offenses that they commit.

In Table 2.2, we again explore the social and demographic characteristics of the white-collar offenders. However, this time, instead of looking at the group as a whole, we categorize offenders by the type of offense they committed. This cross-categorization results in a complex table that may look daunting. Indeed, it does contain lots of information, but if we proceed systematically, we should be able to make sense of it. And, as we will see, our efforts will be rewarded as some intriguing findings about white-collar offenders emerge.

Let's begin by considering the standard demographic characteristics, beginning with race, which is in the first row of the table. It would not be an exaggeration to say that in the decade of the 1970s your chances of finding a non-white antitrust or securities violator were slim to none. More than 99% of both antitrust and securities violators were white. There were 117 antitrust violators in the Yale sample, and 116 of them were white; astonishingly, of the 225 securities violators, 224 were white. On the other end of the spectrum, only 61.8% of the false-claims violators were white, which obviously means that almost 40% of them were non-white, and only 71.5% of those who commit lending and credit fraud were white. The percent white in the other four offense categories falls between these two end-points. Thus, at the time of the Yale study, antitrust and securities violations were committed virtually exclusively by whites. It is a striking finding that there are such large variations in the racial composition of the different offense types.

Table 2.2 Social and demographic characteristics of white-collar offenders by statutory offense (adapted from Table VII in Wheeler et al., 1988)

	ANTITRUST	SECURITIES FRAUD	TAX	BRIBERY	CREDIT FRAUD	FALSE CLAIMS	MAIL FRAUD	BANK EMBEZZLEMENT
Race (White)	99.1%	99.6%	87.1%	83.3%	71.5%	61.8%	76.8%	74.1%
Sex (Male)	99.1%	97.8%	94.1%	95.2%	84.8%	84.7%	82.1%	54.8%
Age	53	44	47	45	38	39	38	31
Financial Standing								
Median Assets	\$650,000	\$59,000	\$49,500	\$45,000	\$7,000	\$4,000	\$2,000	\$2,000
Median Liabilities	\$81,000	\$55,000	\$23,500	\$19,000	\$7,000	\$5,000	\$3,500	\$3,000
Education								
College Graduates	40.0%	43.0%	27.0%	27.0%	18.0%	29.0%	23.0%	13.0%
Home Owners	87.8%	62.1%	57.7%	57.0%	44.8%	42.1%	33.5%	31.0%

The story is similar when we look at gender. As with race, we find notable variations across the offense types by gender. With only very few exceptions, antitrust, securities, tax, and bribery violations are committed by males. In contrast, almost half of the bank embezzlers are females. Again, we observe large variations across offenses on a major demographic characteristic.

Finally, there is age. Two numbers stand out. The average age of the antitrust violators is 53, while the average age of the bank embezzlers is 31. Relatively young people commit bank embezzlement, while people who are almost eligible for early retirement engage in antitrust conspiracies. We apologize for the repetition, but as you have no doubt already noted, there are large variations across offenses in age.

Systematic variations, such as the ones we found here for race, gender, and age, are important. They are clues to how the world works. By definition, systematic variations do not arise randomly. They are the result of some sort of systematic causal process. If we can identify and understand these variations, then we are well on our way to understanding the underlying causal processes that produced them. In our case, this means understanding how and why particular types of people tend to commit particular types of white-collar crimes. By particular types of people, we mean only people who have certain demographic characteristics. As you should know, we have an idea or hypothesis about what is going on with white-collar crime, which we introduced in Chapter 1 and will be developing throughout this book. In brief, our hypothesis is that access to white-collar crime opportunities varies by race, gender, and age as well as other variables, and it is access to opportunities that explains patterns in the social and demographic characteristics of white-collar offenders. In Table 2.2, we see the first preliminary evidence in favor of that hypothesis.

It may be helpful if we explain our reasoning in more detail and with an example. In order to commit certain types of white-collar offenses, it is virtually required that you have access to particular occupational positions. In other words, you have to work in a particular type of industry or have a particular type of job to get the opportunity to commit the offense. For example, it is much easier to commit a securities offense if you work in the securities industry as, say, a stockbroker or a stock analyst. Since most of the people who work in the securities industry

are white males, we should not be surprised to find that most securities offenders are white males. Neither should we be surprised that most antitrust violators are white males. To commit an antitrust violation, you have to have an executive-level position in a fairly large company. As we document later in Chapter 8, these positions are held disproportionately by white males.

There are other indications in Table 2.2 that social characteristics influence access to white-collar crime opportunities. The bottom half of the table shows information on the financial standing, education, and home ownership of the white-collar offenders in each of the offense categories. Financial status is assessed by the median assets and liabilities of the offenders in each offense category. Comparing the antitrust offenders to the bank embezzlers is instructive. The median assets for the antitrust offenders are a whopping \$650,000. For the bank embezzlers, the median assets are a puny \$2,000, which means that by definition half of them have less than \$2,000 in assets. Since their median liabilities are \$3,000, many of them are actually in the hole. The financial standing of the antitrust offenders looks rock solid while the bank embezzlers look like they are just scraping by from paycheck to paycheck.

We see similar extreme differences between antitrust offenders and bank embezzlers in education and home ownership. Four of ten of the antitrust offenders (40%) are college graduates versus about one of ten of the bank embezzlers (13%). Close to 90% of the antitrust offenders (87.8%) own their homes, whereas fewer than a third of the bank embezzlers do. The rest of the offense categories are arrayed between these two extremes. The securities offenders do not appear to be quite as well off as the antitrust offenders in financial standing or home ownership. Nevertheless, they are definitely better off in these regards than are the people convicted of mail fraud, who more closely resemble the bank embezzlers. Less than one-fourth of the mail fraud offenders have a college degree; only one-third own their own homes; and their average liabilities exceed their average assets. Indeed, the only notable difference between those who commit bank embezzlement and those who commit mail fraud is gender. Almost half of the bank embezzlers are women, while eight of ten mail fraud offenders are male. Like others, we find race- and gender-linked differences in offending (Daly,

1989), which we interpret to mean that there are race- and gender-linked differences in opportunities to offend.

A Validity Check

Up to this point, what we have learned about white-collar offenders has come entirely from the Yale study. As we noted at the outset, the Yale study is only one study, and it is always possible that the sample of offenders used in the Yale study is in some way unusual or not representative of white-collar offenders generally. Luckily for us, at approximately the same time as the Yale study was going on, another federally funded investigation of white-collar sentencing was also underway. This study, conducted by Brian Forst and William Rhodes, used a similar methodology and sampled 2,643 individuals convicted of six ostensibly white-collar crimes from eight federal district courts.² The white-collar offenses were bank embezzlement, bribery, false claims, mail fraud, income tax violations, and postal embezzlement. The researchers also included individuals convicted of non-white-collar or common crimes in their sample. The non-white-collar crimes included bank robbery, narcotics, homicide, and postal forgery. Then, as in the Yale study, data on the offenders and their offenses were abstracted from PSI reports.

For our purposes, the important thing about the Forst and Rhodes study is that the offenders come from different federal districts, and the set of offenses is similar although not exactly the same. For example, postal embezzlement, which is in the Forst and Rhodes sample, was not included in the Yale study, and the Forst and Rhodes study lacks antitrust and securities offenders. The four common crimes in the Forst and Rhodes study generally are more serious than the two nonviolent common property crimes (postal theft and postal forgery) in the Yale study. With the Forst and Rhodes data, we can check on the importance of at least one of the potential shortcomings of the Yale study. We can see how the social and demographic characteristics of white-collar offenders convicted of similar offenses but in different federal districts compare. Are they similar or different?

The answer to this question is that they are remarkably similar. Table 2.3 presents information on the social and demographic characteristics

Table 2.3 Descriptive statistics on two samples of white-collar offenders

Sample	TAX		BRIBERY		FALSE CLAIMS		MAIL FRAUD		BANK EMBEZZLEMENT		POSTAL EMBEZZLEMENT ^a	
	Y	F&R	Y	F&R	Y	F&R	Y	F&R	Y	F&R	Y	F&R
Demographic characteristics												
Mean Age	47	48	45	47	39	38	38	37	31	30		34
% White	87.1	89.3	83.3	77.5	61.8	56.9	76.8	78.7	74.1	75.5		65.0
% Male	94.3	91.8	95.2	89.4	84.7	72.8	82.1	85.5	55.2	52.6		89.5%
Personal History												
% College Degree	27.4	23.5	28.9	24.3	29.2	18.4	21.7	13.1	12.9	9.3		1.4
% Home Owners	57.7	70.6	57.0	63.2	42.1	40.0	33.5	31.3	28.4	41.8		49.3

Notes

Y = Yale study sample data from Table 3.1, Weisburd et al. (1991); F&R = Forst and Rhodes sample

Differences greater than 10 percentage points are bolded

^a Postal embezzlement was not included in the Yale study sample

of the offenders in each offense category for both the Yale and the Forst and Rhodes studies. However, to keep things simple, we will discuss only the results for tax violators and bank embezzlers. The results for the other offenses parallel these closely. With respect to age, race, and gender, the tax violators in the Yale study are virtually identical to those in the Forst and Rhodes study, and the same is true of the bank embezzlers from both studies. The average age of a tax violator in the Yale study is 47 as compared to 48 in the Forst and Rhodes study, while the average age of a bank embezzler in the Yale study is 31 versus 30 in the Forst and Rhodes study. The differences in race and gender are equally small. What is most striking is the similarity in the overall pattern of characteristics. In both studies, tax violators overwhelmingly are white males in their late 40s. This result probably stems from the predominance of males as heads of households and, by default, as chief tax preparers in the 1970s. In both studies, we also find that bank embezzlement involves individuals who are younger and more likely to be female or non-white than tax violators. These similarities in patterns extend to other characteristics such as graduating from college and owning a home. In both studies, we find that tax violators are more likely than bank embezzlers to have attained these two markers of social success. Although we won't discuss them here, if you look at the other offense categories in Table 2.3, you will see that the offenders in one study match up well with their counterparts in the other study.

The similarity between the offenders in the two studies means that we can be reasonably sure that they generally represent the type of people who are convicted of these particular white-collar type crimes in federal courts. In other words, we can have some confidence in the validity and generalizability of what we have learned thus far about white-collar offenders, at least those who were convicted in federal district courts in the 1970s.

What can we conclude from all these numbers and comparisons? Two points stand out. First, as a group, white-collar offenders are not like common criminals. The two groups come from different sectors of the population. Second, not all white-collar offenders are alike. They are not all highly educated or wealthy. Indeed, there is substantial variation in the social and demographic characteristics of the people who commit white-collar type crimes. Some indeed do fit the stereotype of the

white-collar offender as an educated, wealthy, employed, white male, but others do not share these attributes. Thus, white-collar criminals turn out to be more socially and demographically variegated than the standard view would have us believe.

White-Collar Criminal Careers

The phrase *white-collar criminal career* seems like an oxymoron. Part of the standard view of white-collar offenders is that they are mainstream, law-abiding individuals. They are assumed to be one-shot offenders, not people who engage in crime on a regular basis. Unlike the run-of-the-mill common street criminal who usually has had repeated contacts with the criminal justice system, white-collar offenders are thought not to have prior criminal records. Think of the white-collar offenders pictured earlier in this chapter and others who have recently been in the news. Martha Stewart and Anthony Fastow, for example, certainly do not have long arrest records. When they appeared before their sentencing judges, they could correctly claim to be first-time offenders. But, as we have already learned, Martha Stewart and Anthony Fastow are not typical of the people who are convicted of white-collar type crimes. Most of the people convicted of white-collar offenses are not like them. Most white-collar offenders who appear in the federal justice system are not as wealthy, highly educated, or socially connected as they are. So, perhaps most white-collar offenders are not like these elite individuals in terms of their involvement in criminal activity either.

Until recently, we really did not know much about the criminal careers of white-collar offenders. However, thanks to the Yale study and the Forst and Rhodes project, the situation has improved. In both of these studies, the researchers abstracted detailed information from the PSIs on the criminal records of the offenders. In addition, David Weisburd, Elin Waring, and Ellen Chayet collected more data on the offenders in the Yale study 10 years after their convictions for the original criterion offenses (Weisburd and Waring, 2001). Analysis of these data has revealed some surprising discoveries about the criminal activities of white-collar offenders. It turns out that, as a group, white-collar offenders are not quite as upstanding and law-abiding as we had thought. Yet, neither are they as entrenched in criminal lifestyles as

common street criminals. So, as we will see, our image of the white-collar offender will have to be modified again but not completely abandoned.

One of the more remarkable findings to emerge out of the Yale studies and that is replicated in the Forst and Rhodes study concerns the prior criminal records of white-collar criminals. Contrary to what we would expect, in both studies we find that at the time of their convictions for the criterion offenses, a surprisingly large proportion of white-collar criminals already had prior criminal records.

Table 2.4 presents information on the prior arrests for all of the white-collar offense categories and for the common offense categories in both studies. First, note that it is not at all unusual for a white-collar offender to have a prior arrest. In both studies, we find that about 40% of the white-collar offenders have a prior arrest. So, a substantial proportion of white-collar offenders have some familiarity with the business end of police work. But they probably do not know their way around a police station as well as the common criminals. As Table 2.4 shows, a much larger percentage of them have prior arrests. Clearly, the white-collar criminals are not as experienced with the criminal justice system as the common criminals.

It may be surprising that four of ten white-collar criminals have had prior contact with the justice system, but are they really that unusual? Perhaps this is about average for the general public. It is hard to say for sure, because there are few studies on the criminal histories of the

Table 2.4 Percent with prior arrests among white-collar and common offenders

OFFENSE	YALE STUDY*	FORST AND RHODES STUDY**
White-Collar	43	39
Antitrust	3	N. A.
Securities	32	N. A.
Income Tax	47	42
Bribery	23	24
Lending and Credit Fraud	55	N. A.
False Claims	56	49
Mail Fraud	54	66
Bank Embezzlement	29	18
Common	90	83

* Adapted from Table 2, Weisburd et al. (1990)

** Adapted from Benson and Moore (1992)

general population, and estimates of the overall prevalence of arrest vary between 10% and 25% (Singh and Adams, 1979; Tillman, 1987), although one study estimated that fully half of all males in the United States will be arrested at some point in their lifetimes (Christensen, 1967).

Although it is not uncommon for white-collar offenders in general to have a prior arrest, this is not true of those who commit some particular types of white-collar crime. Just as we found when we investigated the social and demographic characteristics of white-collar offenders, we also find considerable variation in their criminal histories. In the Yale study, for example, only 3% of the antitrust offenders had a prior arrest. This figure is considerably below the norm for the general population. But more than half of the people convicted for lending and credit fraud, false claims, or mail fraud had a prior arrest, which is considerably above the population norm. Persons convicted of income tax violations, securities fraud, bribery, or bank embezzlement fell between these two extremes. A very similar pattern is found in the Forst and Rhodes study, with those convicted of bribery and bank embezzlement on the low end of the scale compared to those convicted of making false claims or mail fraud.

It appears, then, that bribers and bank embezzlers have less extensive criminal histories than the people who make false claims or commit mail fraud. There is evidence that in this case appearances are not misleading. Table 2.5 shows the average number of prior arrests for each of the white-collar offense categories in the Forst and Rhodes study.³ On average, bribers and bank embezzlers have far fewer prior arrests than the false claims and mail fraud offenders.

As we did when we looked at social and demographic characteristics, we need to ask what general conclusions can be drawn from these numbers. Two conclusions that mirror those we reached earlier on social and demographic characteristics stand out. First, many white-collar offenders do not fit the standard view of this type of offender. In the standard view, the white-collar offender is portrayed as an essentially law-abiding upstanding person. However, it appears that not all of those who are arrested for white-collar crimes are first-time offenders. A non-trivial proportion of white-collar offenders are repeat offenders. Many have been in the courthouse more than once. Second, the people who

Table 2.5 Mean number of prior arrests for white-collar and common offenders

OFFENSE	MEAN	PERCENT WITH AT LEAST ONE ARREST
White-collar	1.79	39.0
Embezzlement	0.52	18.4
Bribery	0.65	23.6
Income tax	1.91	42.1
False claims	2.29	49.0
Mail fraud	3.90	65.9
Common	5.63	81.1
Narcotics	3.55	72.2
Forgery	6.49	82.6
Bank robbery	6.85	88.4
All offenders	3.41	57.8

commit some types of white-collar crime are much more criminally experienced than the people who commit other types of white-collar crime. Specifically, antitrust offenders, bank embezzlers, and bribers appear to be much less caught up in a life of crime than people who make false claims, commit lending and credit fraud, or use the U.S. postal system to commit fraud. Thus, as we found with age, gender, and race, it appears that different types of people who have different criminal backgrounds commit different types of white-collar crime.

What about Sutherland and High-Status Offenders?

Up to this point, we have learned a lot about the social, demographic, and criminal characteristics of the people convicted of white-collar crimes in the federal judicial system. But in our investigation, thus far, we have taken an offense-based approach to white-collar crime. How would things change if instead we followed Sutherland and others who focus on individuals who score high on respectability and social status and who hold positions of significant influence or power in legitimate public or private organizations? What determines who of this group becomes a white-collar offender? For two reasons, this is a particularly difficult question to answer.

First, there are very few quantitative studies to guide us. Most of what we know about high-status white-collar offenders comes from case studies of particularly egregious offenders or offenses. Although case

studies can be enormously informative, it is always risky to generalize from them. That there are so few quantitative studies is not surprising. It is hard to study high-status individuals using standard research methodologies such as surveys or interviews. They often are unwilling to cooperate in studies, and it is even harder to get them to cooperate when the focus of the study is crime or wrongdoing.

The second reason is more complex. A large proportion of the really egregious white-collar offenses, the ones that make the evening news and the newspaper headlines, are committed in organizations, often large complex organizations. This complicates our task of describing the white-collar offender enormously. In complex organizations, people often—if not always—work in groups to accomplish complex tasks and goals. Because many people can be involved, it often is difficult to determine who should be held accountable when an organizational project or goal involves criminal activities. The job becomes even harder if the criminal activities persist over a long period of time. Throughout the duration of the offense, different people may be involved. Individuals may participate for a while but then move on to different positions in the organization or out of it altogether.

For example, in an organization such as the Ford Motor Company, literally hundreds of thousands of people work at producing automobiles. In the late 1970s and early 1980s, Ford was alleged to have produced an unsafe vehicle—the Ford Pinto. Because of a poorly designed and badly located gas tank, the Pinto had a disturbing tendency to explode if it was rear-ended by another car. It is estimated that hundreds of people died as a result of exploding Pintos (Dowie, 1987). As a result of one horrific accident, a local prosecutor in Elkhart, Indiana, charged Ford (i.e., the company) with negligent homicide when three teenage girls were burned to death after the Pinto they were riding in was struck from behind and exploded (Cullen et al., 2006). Ford was eventually acquitted at trial, but the case raises an interesting question. Suppose Ford had been convicted. In that case, who should we say were the responsible individuals—that is, who were the white-collar offenders? Many people were involved at different points in time, and many people made decisions that contributed to the final design of the Pinto. Indeed, Michael Cosentino, the prosecutor who tried the Pinto case, found this to be such a vexing question that he decided to charge the Ford

Motor Company rather than individual executives at Ford (Cullen et al., 2006).

The problem here is a general one that criminologists and prosecutors have long recognized when it comes to understanding and controlling crimes committed in organizational settings. In large complex organizations, responsibility for projects often is diffused or spread out over a number of people. The diffusion of responsibility makes it difficult to single out a particular individual or group of individuals who ought to be held responsible when things go wrong. In these cases, it may make more sense to focus on the organization itself rather than the individuals involved in it at any particular point in time. Indeed, there is a long and respectable tradition in white-collar crime research that focuses on organizational behavior as opposed to the behavior of individuals (Clinard and Quinney, 1973; Clinard and Yeager, 1980). In Chapter 7, we take up the issue of how organizations may shape individual behavior. However, in this chapter, our focus is on individuals.

Accordingly, we return to the question: what, if anything, distinguishes the high-status individuals who engage in white-collar crime from other high-status individuals who do not? Since by definition the individuals of concern here are of similar social status, we have to look elsewhere for factors that may separate the offenders from the non-offenders. Two possibilities suggest themselves. First, something external to the offenders, something in their social situation or experience besides their social status may distinguish them from other individuals. For example, they may be under some type of strain that drives them to offend. One of the theories that we examine in the next chapter makes this argument. Other theories suggest other events or conditions that promote offending. We cover these as well in Chapter 3. For now, however, we consider a second possibility, one more directly related to their personal characteristics, and that is their psychological make-up. Perhaps certain psychological traits facilitate or are associated with elite white-collar offending.

The psychology of white-collar offenders is not a subject on which researchers have invested an enormous amount of time and effort (Meier and Geis, 1982). There are very few rigorous quantitative studies, and we do not know a lot. Yet, the idea that elite white-collar offenders are

somehow psychologically distinctive has been around for a long time. Nearly a century ago, the sociologist E. A. Ross, writing about what he called “criminaloids,” argued that the distinctive characteristic of the business leaders of his day, whom today we would call white-collar criminals, was *moral insensitivity*. In the pursuit of profit, criminaloids are not bothered by the harm that they inflict on others or on society in general. However, and this is an important qualification, criminaloids (i.e., white-collar offenders) are not the victims of any sort of serious psychological disturbance or abnormality (Ross, 1977). White-collar offenders may be unusual, but they are not crazy. Ross (p. 31) described them this way,

The key to the criminaloid is not evil impulse but moral insensibility... Nature has not foredoomed them to evil by a double dose of lust, cruelty, malice, greed, or jealousy. They are not degenerates tormented by monstrous cravings. They want nothing more than we all want—money, power, and consideration—in a word, success; but they are in a hurry and they are not particular as to the means.

Sutherland held a similar view of white-collar offenders as more or less psychologically normal. Indeed, he used the apparent psychological normalcy of white-collar offenders to ridicule the criminological theories of his day. These theories typically presented the criminal as a person who grew up in poverty and who was psychologically damaged by all of the social pathologies that go along with poverty. Poverty and the psychopathic conditions associated with it were seen as the root causes of crime. In a famous passage, Sutherland argued that this approach cannot be correct. Poverty and psychopathology cannot be general explanations of crime, because with respect to white-collar offenders, “With a small number of exceptions, they are not in poverty, were not reared in slums or badly deteriorated families, and are not feeble-minded or psychopathic” (Sutherland, 1940).

We examine Sutherland’s theory of crime and its application to white-collar crime in greater detail in the next chapter. For now, though, we note that Sutherland believed that white-collar offenders interpret or define their business-related activities in terms that favor or justify law breaking. For him, what distinguishes white-collar offenders is a particular value system or view of the world in which illegal behavior in

the conduct of business is seen as acceptable and justified. Hence, white-collar offenders do not acknowledge the criminality of their actions, and they certainly do not think of themselves as criminals.

A good deal of anecdotal evidence indicates that Sutherland's understanding of the psychology of white-collar offenders has considerable merit. One of the authors (Benson) interviewed a small sample of individuals who had been convicted of white-collar crimes. With only a few exceptions, these individuals denied that they had ever intended to commit a crime. They described their crimes as normal business practices or at worst as honest mistakes. For example, two men who ran a public construction firm and who had been convicted of bid rigging and other violations of antitrust law presented this interpretation of their activities: "It was a way of doing business. Like, you know, why do you brush your teeth in the morning? It was the way things were done long before we got into the business" (Benson, 1985).

This way of looking at illegal antitrust activities apparently is quite common among business executives. In his famous case study of the heavy electrical equipment antitrust case of 1961, Geis reports the comments of an executive involved in the case. Testifying before the Senate Subcommittee on Antitrust and Monopoly, the executive responded to a question from the committee's attorney:

Committee attorney: Did you know that these meetings with competitors were illegal?

Witness: Illegal? Yes, but not criminal. I didn't find that out until I read the indictment...I assumed that criminal actions meant damaging someone, and we did not do that...I thought that we were more or less working on a survival basis in order to try to make enough to keep our plant and our employees.

This theme often is repeated by white-collar offenders, particularly by high-status executives who commit offenses in the furtherance of legitimate businesses. They deny that their actions were intended to harm anyone directly, and they deny that anyone was directly harmed. They do not define their actions as morally wrong. Rather, they define them as economically necessary in order for their businesses to survive. If we take their words at face value, it appears that these executives view violating the law to protect their businesses as the lesser of two

evils. Because their actions are not in their view harmful or morally wrong, it is acceptable for them to break the law in order to protect their companies. Indeed, for businessmen, whether a practice is defined as ethical depends in large measure on whether it is a standard practice. If something is normal practice, then it is ethical. It may not be legal exactly but it is ethical in the eyes of business executives (Chibnall and Saunders, 1977). Thus, two characteristics of high-status offenders appear to be a willful blindness to the criminality of their behavior and a belief that the economic survival of the firm is more important than obedience to the law.

Business executives are not alone in denying the guilty mind. Medical and legal professionals of all sorts routinely commit fraud and, when caught, vigorously deny that they knowingly broke the law. For example, a dentist who was convicted of fraud against the Medicaid system explained his offense by blaming others in the practice.

Inwardly, I personally felt that the only crime I committed was not telling on these guys. Not that I deliberately, intentionally committed a crime against the system. My only crime was that I should have had the guts to tell on these guys, what they were doing, rather than putting up with it and then trying gradually to get out of the system without hurting them or without them thinking that I was going to snitch on them.

(Benson, 1985:597–598)

Physicians who have been caught violating the laws governing their profession are especially unwilling to acknowledge that their actions are motivated by greed. Instead, they see themselves as “sacrificial lambs” who have fallen victim to idiotic rules and regulations or mendacious employees (Jesilow, Geis, and Pontell, 1991). Like business executives, medical professionals often profess allegiance to a different set of priorities. As they put it, focusing on patient care is far more important than obeying some silly law or regulation. Consider this example from a physician convicted of fraud against Medicaid (Jesilow et al., 1991: 3321).

They [the Medicaid officials] are the ones who eventually look over all this and say: “No, that was wrong.” Now their idea of right and wrong is very different from what is considered right and wrong by normal people, or by physicians who are not necessarily normal, but at least [have their own]

ideas about what is right and wrong. And to us, right and wrong have to do with things like patient care, whether we give them the right treatments. It doesn't have anything to do with some Medicaid regulation.

Case studies of well-known and egregious white-collar offenses suggest several additional psychological factors that may be involved in high status white-collar crimes. One of these traits is the offender's relish of a *sense of superiority over the victim* (Stotland, 1977). For example, in the 1970s a man named Robert Vesco orchestrated a series of elaborate investment frauds to steal millions of dollars from other businessmen. Vesco was openly contemptuous of his victims, whom he described as fools. Another case involved an insurance company called Equity Funding. In the Equity Funding case, a group of conspirators defrauded hundreds of millions of dollars from legitimate insurance companies by creating fraudulent policies on fictitious persons (Seidler, Andrews, and Empstein, 1977). As the fraud progressed, the conspirators seemed to take delight in fooling the auditors, the Securities and Exchange Commission, and other insurance companies. More recently, in the Enron case, a telephone call between two California energy traders was taped as they discussed how they had illegally manipulated the price of energy that Californians had to pay. The exchange begins with the traders talking about California's demand that Enron refund \$8 million in overcharges for energy:

Trader 1: They're [expletive] taking all the money back from you guys, all the money you guys stole from those poor grandmothers in California?

Trader 2: Yeah, Grandma Millie, man.

Trader 1: Yeah, Grandma Millie, man. But she's the one who couldn't figure out how to [expletive] vote on the butterfly ballot.

Trader 2: Yeah, now she wants her [expletive] money back for all the power you've charged right up, jammed right up her [expletive] for [expletive] \$250 a megawatt hour.

As this conversation indicates, the traders appeared to take a perverse delight in manipulating and making fools of their victims. The feeling of power and superiority that arises out of the offense is psychologically rewarding to the offender and may become a source of motivation for continued offending (Shover, 2007; Stotland, 1977).

The white-collar offender's sense of superiority is often accompanied by arrogance (Shover and Hochstetler, 2006:66–67). Elite white-collar offenders seem to believe “they don’t have to follow the rules because they made them” (Swartz, 2003:302). As Shover and Hochstetler (2006:67) note, the arrogant are accustomed to being in charge and to doing things their own way. Convinced of their own superiority, they assume that whatever they want to do must be right. They do not have to be bothered with the minor technicalities of the law, because in their view their personal integrity is beyond question. Like old-time Calvinists, they seem to believe that their personal success in reaching the top of the corporate hierarchy indicates that they have been chosen by a higher power. Thus, they are entitled to do as they please and to take what they want (Shover and Hochstetler, 2006).

Related to their arrogance and sense of superiority is the gratification that comes from mastering a complex situation. Stotland (1977) calls this source of motivation “ego challenge.” It may be a particularly important and prevalent aspect of long-term frauds that are carried out in large organizations and that require highly specialized skills. For example, many of the offenses that were committed during the Enron scandal involved highly complex schemes designed to manipulate and misuse the standard rules and practices of accounting and the reporting requirements of the SEC (McLean and Elkind, 2003). The schemes had to make Enron appear to be more profitable than it really was. Further, the schemes had to be constructed so that they did not raise the suspicions of regulators at the SEC or Wall Street investors or industry analysts. In short, the executives at Enron had to fool a lot of very smart people, at least for a period of time. On the other hand, it is possible that the people who were supposed to be watching the barn door, the so-called gatekeepers, fell down on the job (Coffee, 2002). Nevertheless, it took smart people with a good deal of skill to come up with the accounting schemes used at Enron. The executives who carried it off clearly were proud of their skills and enjoyed exercising them (McLean and Elkind, 2003).

As we discuss in greater detail in the next chapter, some scholars believe that large organizations, especially large for-profit private corporations, are inherently criminogenic. Further, they tend to be led by individuals with particular personality traits conducive to crime

(Gross, 1978, 1980). According to Edward Gross (1978), the people who end up as leaders in large organizations tend to be “organizational strainers.” They are ambitious, shrewd, and morally flexible. They are ambitious in the sense that they have a strong desire to get to the top, to be seen as persons of importance, power, and status. Ambition alone is not enough, however. It must be coupled with shrewdness, the ability to spot organizational opportunities for advancement. They understand that success is not based on talent alone. It also involves the ability to fraternize with and to make a good impression on people with power, people who can help your career advance in the political in-fighting that characterizes large organizations. Finally, organizational strainers tend to be morally flexible. They are not troubled putting organizational goals ahead of ethical principles and legal mandates.

There is some intriguing evidence in support of the idea that white-collar criminals are socially adept and that their sociality may indirectly facilitate their involvement in white-collar crime. In one of the few quantitative studies of the psychology of white-collar offenders, researchers compared a sample of persons who had been convicted of various white-collar crimes to a matched control sample of non-criminal white-collar employees on several personality scales (Collins and Schmidt, 1993). Offenders scored differently from non-offenders in two areas: social conscientiousness and social extraversion. First, offenders scored lower on four scales—performance, socialization, responsibility, and tolerance—that tap a broad personality construct called *social conscientiousness*. Individuals who display social conscientiousness are dependable, responsible, rule-abiding, honest, motivated to high job performance, and committed to social and civic values. The white-collar offenders were less likely to display these traits than their law-abiding counterparts. On the other hand, the white-collar offenders scored higher than the non-offenders on two other scales: social extraversion and extracurricular activities. The social extraversion scale measures how individuals have in the past had friendships, been popular, and been effective in social situations. The researchers speculate that socially extraverted people are more likely to get involved in extracurricular activities. The experiences gained in these activities coupled with their outgoing personalities aid potential white-collar offenders in the competition for higher level jobs. These jobs, in turn, provide access

to white-collar crime opportunities, which persons who lack social conscientiousness may well take advantage (Collins and Schmidt, 1993).

All in all, several potentially important characteristics of the psychology of white-collar offenders appear to stand out. They include the offenders' unwillingness to define their behavior as crime, belief that economic survival is more important than obeying the law, sense of superiority over victims, need for ego challenge, and a lack of social conscientiousness. Although plenty of anecdotal evidence suggests that some or all of these characteristics play a role in many white-collar crimes, we must be careful how we interpret this evidence. It is important not to overstate the causal importance of these psychological factors. Just because people who commit white-collar crime appear to have a sense of superiority over others, it does not follow that people who think that they are better than everyone else are white-collar criminals. Similarly, even though some white-collar offenders appear to find intrinsic gratification in orchestrating a complex illegal scheme, we cannot conclude that people who like solving complex problems will resort to white-collar crime when they are bored. In addition, we must remember that almost all of the research on the psychology of white-collar offenders involves case studies or very small samples of offenders. These studies have been based almost exclusively on high-status offenders. How strongly we can generalize from this empirical base is not at all clear. Whether they would apply, for instance, to low-status offenders is an open question. Nevertheless, it would seem not too much of a stretch to speculate in one way. If individuals with the characteristics identified earlier find themselves in situations that offer opportunities for white-collar offending, then we should not be particularly surprised when they take advantage of those opportunities.

Summary

The main objective of this chapter has been to describe what is known about the white-collar offender or, to put it more accurately, about the people who commit white-collar-type crimes. Two large empirical studies of offenders agree that the people who are convicted of white-collar type crimes in the federal judicial system are not like the people who are convicted there of ordinary street crimes (Benson and Kerley,

2000; Weisburd et al., 1991). Those convicted of white-collar type offenses come from a different social and demographic background than common offenders. Compared to common street-crime offenders, white-collar offenders are older, more likely to be male, and more likely to be white. They also are more likely to be married, to own their own homes, to be financially secure, and to be employed at the time of their offenses. These findings should not come as a major surprise to anyone. But it is surprising how many of the white-collar offenders in these studies do not appear to conform to Sutherland's definition of the white-collar offender as a person of respectability and high social status. As David Weisburd and his colleagues (1991) put it, these are primarily middle-class offenders. However, this picture of the white-collar offender is necessarily limited by the data on which it is based. Samples drawn from the federal judicial system miss all of those offenders who for whatever reason avoid being drawn into the system in the first place. It seems likely that if anyone is going to avoid the system, it will be Sutherland's type of high-social-status offender.

Regarding the psychology of white-collar offenders, it is probably safe to say that the vast majority of them do not view themselves as criminal or their activities as crimes. With very few exceptions, they go to lengths to deny having any intent to commit a crime against anyone (Benson, 1985). It also seems clear that the perpetrators of really big-time white-collar crimes possess an exaggerated sense of self-confidence and entitlement. As E. A. Ross put it nearly a century ago, the key characteristic of the white-collar criminaloid is simply an insensitivity to the moral implications of their actions. They may also have other characteristics, such as shrewdness and extroverted personalities that enable them to fare well in the competition for high-level jobs where opportunities for white-collar crime are plentiful.

EXPLAINING WHITE-COLLAR CRIME

Traditional Criminological Theories

Introduction

One of Sutherland's professed goals in writing about white-collar crime was to reform criminological theory. In the 1930s, when Sutherland began working in this area, criminological theory was dominated by the view that crime was concentrated in the lower social classes and caused by the personal and social pathologies that accompany poverty. Sutherland contended that this approach was wrong on two counts. First, it failed to "fit the data on criminal behavior." As he correctly pointed out, many—indeed most—poverty-stricken people are not criminal. Therefore, poverty and the pathologies associated with it cannot be general or sufficient causes of criminal behavior. Second, theories that use data taken from the poverty-stricken classes are based on "a biased sample of all criminal acts." Specifically, they ignore the many serious crimes committed by individuals in the upper social classes in the course of their occupations—in other words, white-collar crime. A truly adequate criminological theory should account for or explain crime in all its different forms (Sutherland, 1940). Sutherland proposed a theory of white-collar crime based on his famous differential association theory.

Sutherland has not been the only one to attempt to develop a theory of white-collar crime. Just as with conventional crime, many theoretical

approaches have been tried in the search for a better understanding of this form of crime. Variants of differential association, anomie, control, rational choice, and integrated theories have been proposed to explain white-collar crime.

Yet, for a variety of reasons, none of these efforts has achieved widespread acceptance, and there is little consensus on how best to explain white-collar crime. Empirical work in this area is difficult to conduct. Researchers rarely have access to the financial resources that are made available to those who study traditional forms of street crime. There are few solid facts to work with, and none of the theories of white-collar crime have been subjected to extensive empirical scrutiny. In addition, some theories of white-collar crime are constructed in such a way that it is difficult to design tests for them. For example, some theories use variables that apply at different levels of analysis. Individual-, organizational-, structural-, and cultural-level variables may all be cited as necessary parts of the overall explanation of white-collar crime (Coleman, 1987). Though this kind of approach is comprehensive and provocative, it is also very difficult to test. It is almost impossible to measure or control for all of the factors that are cited in the explanation. Thus, the empirical validity of the theories of white-collar crime remains unknown.

In this chapter, we review the theories that have been proposed for white-collar crime. Because we are not yet at the stage where we can identify the theoretical approach that provides the best or the most promising explanation, it is important to get an overview of the various approaches that have been tried. This review serves another purpose as well. It helps to show how criminology has continued to be influenced by and make progress toward one of Sutherland's original objectives. He wanted to reform criminological theory so that it would take into account all forms of criminal behavior, not just juvenile delinquency and common street crimes. Although criminologists have not made a great deal of progress in testing theories of white-collar crime, they have continued to pursue the objective that Sutherland established. They have explored how standard criminological theories can be applied to white-collar crime.

Differential Association

In keeping with his objective of reforming criminological theory, Sutherland theorized that the same general processes that cause other sorts of crime also cause white-collar crime. He argued that individual involvement in white-collar crime comes about as a result of a process called *differential association*. The theory of differential association postulates that “criminal behavior is learned in association with those who define such criminal behavior favorably and in isolation from those who define it unfavorably, and that a person in an appropriate situation engages in white-collar crime if, and only if, the weight of definitions favorable exceeds the weight of the unfavorable definitions.” Sutherland thought that attitudes and cultural orientations that define illegal business behavior in favorable terms are pervasive throughout the business world. Newcomers to the world of business are socialized to accept these attitudes and orientations. They learn how to commit certain types of offenses and how to rationalize these offenses so that, in the offender’s mind, they are seen as acceptable, ordinary, and necessary business practices. Thus, a white-collar criminal culture permeates the world of business and is passed from one generation of executives and employees to the next.

Sutherland had many examples of how young people new to the world of business are socialized into the self-serving morality of the marketplace by their bosses. For example, a manager of a shoe store explained the rules of the game to a new employee this way (Sutherland, 1983:243).

My job is to move out shoes and I hire you to assist in this. I am perfectly glad to fit a person with a pair of shoes if we have his size, but I am willing to mis-fit him if it is necessary in order to sell him a pair of shoes. I expect you to do the same. If you do not like this, someone else can have your job. While you are working for me, I expect you to have no scruples about how you sell shoes.

Retail sales may be a cutthroat business, but it is not the only profession in which dishonesty prevails. Consider another example from Sutherland (1983:244–245) regarding a certified public accountant who worked for a respected firm of public accountants. After the accountant

had been on the job for several years, he had this to say about the morality of his profession (Sutherland 1983:244).

While I was a student in the school of business I learned the principles of accounting. After I had worked for a time for an accounting firm I found that I had failed to learn many important things about accounting. An accounting firm gets its work from business firms and, within limits, must make the reports which those business firms desire. The accounting firm for which I work is respected and there is none better in the city. On my first assignment I discovered some irregularities in the books of the firm and these would lead anyone to question the financial policies of that firm. When I showed my report to the manager of our accounting firm, he said that was not a part of my assignment and I should leave it out. Although I was confident that the business firm was dishonest, I had to conceal this information. Again and again I have been compelled to do the same thing in other assignments. I get so disgusted with things of this sort that I wish I could leave the profession. I guess I must stick to it, for it is the only occupation for which I have training.

The attitudes and practices that Sutherland found during his research have persisted. In the early 1980s, Benson conducted a series of interviews with businessmen convicted of white-collar offenses. These offenders expressed sentiments very similar to those reported by Sutherland. For example, recall the owner of a public construction firm whom we first introduced in Chapter 2, who was convicted of antitrust violations for bid rigging. He had this to say about how business was conducted in his industry: "It was a way of doing business before we ever got into the business. So, it was like why do you brush your teeth in the morning or something ... It was part of the everyday ... It was a method of survival" (Benson, 1985:591).

Recall as well the attitudes of the Enron traders quoted in Chapter 2. What these and many, many other examples that could be found suggest is that Sutherland was right. The culture of business does not promote morality or obedience to the law. Rather, it provides to those who come in contact with it definitions of the world that are favorable to violation of law.

But the mere presence of definitions favorable to the violation of law is not enough by itself to cause white-collar crime. Definitions favorable

to violation of the law must be of sufficient magnitude or “weight” so as to overwhelm competing definitions unfavorable to violations of law. According to Sutherland, in the world of business, this condition is satisfied because of isolation and social disorganization. Members of the business community are isolated from definitions unfavorable to their law violations because the government, entertainment industry, and news media have traditionally equated crime with the lower socioeconomic classes. Hence, businesspersons rarely are confronted with unfavorable definitions of their behavior, and they are unlikely to experience criminal labeling.

An often-overlooked dimension of Sutherland’s theory of white-collar crime is his argument that white-collar crime flourishes because society is not socially well organized against it. He identified two types of social disorganization: *anomie* refers to a lack of standards regarding behavior in specific areas of social action; *conflict of standards* refers to conflict between social groups with reference to specific practices. Sutherland thought that anomie regarding harmful and illegal business practices is widespread for a couple of reasons. First, business behavior is complex, technical, and difficult to observe. Second, because America was founded on the ideals of competition and free enterprise, the public is ambivalent about government control of business activity. Taken together, these factors have prevented the development of a strong public consensus on the wrongfulness and harmfulness of shady business practices. Lacking clear signals of concern from the public, law enforcers are not vigorous in their pursuit of business misconduct.

Also mitigating against control of business misconduct is an enduring conflict of standards between the business community and other interests in society. According to Sutherland, the business community is tightly organized against regulatory control of business practices. It always vigorously contests any effort by government, consumer groups, labor unions, and environmental organizations to expand regulatory controls and to criminalize harmful business practices. The continual conflict between the business community and those who would control it undermines the development of a strong public moral consensus against misconduct. The idea that regulations are “bad for business and the economy” has been a catchphrase for business leaders and their defenders throughout American history. It is summed up neatly in the

title of a recent article in *Capitalism Magazine*. The title read as follows: “Paralyzing America’s Producers: The Government’s Crackdown on American Businessmen is Devastating Our Economy.” According to the authors, Yaron Brook and Alex Epstein, “America’s economy is staggering because America’s businesses are staggering. The cause—and the factor that must be removed to revive the economy—is the government’s ongoing regulatory crackdown on business.” The article was written in 2002 shortly after the scandals at Enron and WorldCom broke (Brook and Epstein, 2002).

Anomie Theory

The concept of anomie has a long history in sociology and criminology. It was most famously proposed by Durkheim as an important factor in suicide (Durkheim, 1951). For Durkheim, anomie referred to a sense of normlessness or lack of regulation in society. With respect to criminology, anomie theory was originally developed by Robert Merton. For Merton, *anomie* referred not only to a sense of normlessness, as Durkheim proposed, but to a distinctive feature of American society (Merton, 1938). According to Merton, American society strongly emphasizes the desirability of material success and individual achievement. These goals are promoted as worthwhile—indeed, essential—objectives that everyone should pursue. At the same time, however, access to legitimate opportunities to achieve these goals is not equally available to everyone, and less emphasis is placed on achieving these objectives through legitimate means. The strong emphasis placed on the goals of individual material success coupled with the limited access to and emphasis on legitimate means of achievement meant that goal-seeking behavior is not well-regulated or channeled in American society. Hence, people look for other ways to get ahead and sometimes resort to criminal means. Merton used anomie to explain why some societies have higher crime rates than others and why crime is concentrated in the lower social classes (Merton, 1938).

In a thoughtful effort to extend Merton’s anomie theory to corporate deviance, Nikkos Passas argues that societies based on capitalistic economic principles have cultural and structural contradictions that promote widespread corporate deviance (Passas, 1990). Passas argues

that a cultural emphasis on wealth and material success permeates all levels of the class structure and shapes both individual and corporate behavior. Although business corporations can have multiple goals, in capitalist economies the dominant goal is always profit maximization (Vaughan, 1983). Corporations compete with one another to maximize profits in a game that is never ending. There is no obvious stopping point at which enough is enough. Weak competitors may fall by the wayside, but new ones emerge to take their place. So, even companies that are leaders in their industries must always worry about potential competition. Hence, because of the competitive structure of capitalist economies, corporations are continually under pressure to do better.

Coupled with the cultural themes of success and endless striving are a cultural uncertainty and confusion about where the line between acceptable and unacceptable business behavior should be drawn. In this anomic environment, there is strong and constant pressure to engage in corporate deviance to achieve profit goals, and corporations often succumb to this pressure. In Passas's view, corporate crime and deviance are the unavoidable by-products of capitalistic economies.

Edward Gross takes a similar view of corporate deviance, but he focuses more on the culture and structure of organizations than on that of society as a whole (Gross, 1978). Gross argues that organizations are inherently criminogenic, because they are goal-directed entities, and their performance is evaluated according to their effectiveness in achieving their goals. Hence, they are continually under pressure to achieve. Further, organizations always confront competition and uncertainty in working toward their goals. The emphasis on performance combined with competition and uncertainty creates pressure to break rules and to achieve goals at all costs.

Gross hypothesizes that variation in organizational crime results from several sources. First, the degree of accountability of an organization or an organizational subunit is directly related to the likelihood of rule breaking. Organizations that are held accountable to specific criteria by which success in goal attainment can be judged are under greater pressure to perform than organizations whose success in goal attainment is not as strictly judged.

Second, pressure to engage in organizational crime is directly related to the objectivity of performance measures. Business corporations

can be judged and compared against one another in terms of their profitability. Hence, their relative level of success in meeting this goal can be easily determined by others. For example, one very simple and objective measure of the relative success of a corporation is its "earnings per share." As the term implies, earnings per share can be roughly defined as the total earnings that a company has in a particular reporting period, which is usually a quarter of the year, divided by the total number of shares outstanding in the company.⁴ If a company earned a million dollars and there were ten million shares outstanding, then the company would have earned ten cents per share. In general, the higher a company's earnings per share, the better it is doing for shareholders. Hence, this number is important to investors and Wall Street analysts. Not surprisingly, companies try very hard to reach their expected earnings per share numbers every quarter. Failure to generate significant earnings per share may cause investors to move their money elsewhere, which from the perspective of the company is not good. This possibility puts company executives under a great deal of pressure to do whatever is necessary, including, as we have seen recently, engaging in fraudulent accounting practices, to meet Wall Street's expectations regarding earnings per share.

In contrast to for-profit corporations, many other types of organizations, such as hospitals, universities, and government bureaucracies, are not subject to such a brutally simple and objective measure of their success. Like all organizations, they are goal-driven. It is more difficult to tell, however, exactly how well they are doing relative to their goals and to one another. Hence, we expect the leaders of these organizations to experience less pressure to break the law to achieve organizational goals than business executives.

Third, within corporations, the more a subunit interacts with the organizational environment, the more likely it is to deviate to achieve goals because of the uncertainty generated by the environment. The environment of an organization includes competitors, suppliers, government regulators, and customers. Thus, among manufacturers, we should expect to find more illegal or fraudulent activity in sales departments than in engineering departments. People in sales must interact regularly with competitors, suppliers, customers, and regulators. These environmental entities are a source of uncertainty. They can

impede goal attainment and must, therefore, be controlled. Engineers, on the other hand, are relatively isolated from environmental contingencies and hence have less need to resort to fraudulent or criminal means to reduce environmental uncertainty.

Fourth and finally, pressure to engage in organizational crime is inversely related to goal displacement. If an organization that is threatened by lack of success in achieving its manifest goals can shift to other more attainable goals, then the pressure to deviate is lessened. The ability to displace goals is probably less available to private for-profit organizations than it is to nonprofit and governmental organizations. Consider, for example, the March of Dimes, an organization that was formed in 1938 to combat polio, a disease that had crippled thousands of young children.⁵ The organization funded research on polio and eventually, in 1952, Dr. Jonas Salk developed a vaccine that proved effective. By 1958, hundreds of millions of children had been vaccinated, and the disease was essentially defeated. So, what happened to the March of Dimes? Did the organization disband now that its goal had been accomplished? No. Rather, it began to focus on other childhood diseases and continues to do so today. This sort of goal displacement is more difficult if not impossible for profit-making business organizations. They either must make money or go out of business. The option of just doing something else is not open to them.

Altogether, accountability, objectivity of performance measures, environmental uncertainty, and flexibility in goal displacement influence the degree of pressure that organizations are under to deviate. And this pressure, while it may rise and fall, never disappears entirely. It is always there, always demanding that the organization surpass its performance goals.

As we noted in the preceding chapter, according to Gross, the individuals who are most likely to rise to the top of the organizational hierarchy are "organizational strainers." Strainers are ambitious, shrewd, and morally flexible. They are characterized by a strong desire for occupational achievement, the ability to spot patterns of organizational opportunity, and a willingness to treat organizational goals as their own and to change their moral stance as the situation demands. Organizations, thus, tend to be led by individuals for whom personal success is closely tied to the organization's success in meeting performance goals. Hence,

they are especially susceptible to the emphasis on successful performance and to pressures to deviate in pursuit of success.

Control Theory

Another avenue of approach toward explaining white-collar crime takes control theory as its starting point (Hirschi, 1969). There are several variants of control theory, but all share in common the idea that deviance is natural and must be controlled by external social forces or internal predispositions. Travis Hirschi's social bond theory is the most-well-known version of control theory. Social bond theory starts with the premise that delinquent acts are more likely to occur when an individual's bond to society is weak or broken. The social bond is composed of four interrelated elements: attachment to others, commitment to conventional lines of action, involvement in conventional activities, and belief in society's common value system. To the extent that these elements are strong, they restrain individuals from involvement in criminal behavior. But if they are weak, then the individual is free to engage in crime.

Although control theory is most often applied in the context of juvenile delinquency or ordinary street offending, it can also be used to explain white-collar crime by corporate executives (Lasley, 1988). To do so requires that the elements of the social bond be reconceptualized within the context of the corporation and its executives. It is the strength of the executive's bond to the corporation, as opposed to society in general, that regulates involvement in executive white-collar crime. James R. Lasley proposes four theorems regarding executive white-collar crime, which are straightforward translations of Hirschi's basic propositions regarding juvenile delinquency and the social bond (Lasley, 1988). First, the more strongly an executive is attached to other executives, coworkers, and the corporation, the less likely the executive is to commit white-collar crime. Second, the more strongly an executive is committed to corporate lines of action, the lower the frequency of executive white-collar crime. Third, the more strongly an executive is involved in corporate activity, the lower the frequency of white-collar offending. Fourth, the more strongly an executive believes in the rules of the corporation, the lower the frequency of white-collar offending. Lasley tested his theory with data drawn from a survey of 521 executives

employed by a multinational automobile company. He found support for all of his theorems.

In the late 1980s and early 1990s, Travis Hirschi and Michael Gottfredson developed a new version of control theory that has been called self-control theory (Hirschi and Gottfredson, 1987a, 1987b). The basic premise of self-control theory is that crime and other forms of deviance result from the combination of low self-control and criminal opportunities. Low self-control is conceived to be a behavioral predisposition that inclines individuals to pursue their short-term self-interest with little regard for long-term consequences of their actions or for the rights and feelings of other people. One's level of self-control is assumed to be established early in life and to remain relatively constant thereafter. Persons with low self-control are more likely to take advantage of criminal opportunities than persons with higher levels of self-control.

Hirschi and Gottfredson argue that self-control theory is a general theory of crime and that it applies to white-collar crime. Indeed, they argue that the pursuit of special theories of white-collar crime is misguided. Based on their theory of self-control, they contend that white-collar crime should be relatively rare compared to street crimes because persons with low self-control are unlikely to succeed in white-collar type occupations. Hence, people with low self-control have limited opportunities to commit white-collar offenses. Conversely, people who are likely to succeed in white-collar occupations have high levels of self-control and hence are not likely to take advantage of the criminal opportunities that their occupations provide them. The few white-collar persons who do engage in white-collar crime are assumed to have less self-control than their similarly situated counterparts, though they may have more self-control than ordinary street criminals.

The ideas that white-collar crime is rare and that it can be explained by the same control-based factors as other crimes have been vigorously contested by many white-collar crime scholars (Benson and Moore, 1992; Geis, 1996; Reed and Yeager, 1996; Steffensmeier, 1989; Yeager and Reed, 1998). There are three problems with self-control theory as applied to white-collar crime.

First, whether white-collar crime is rare is debatable for both empirical and theoretical reasons. Sutherland, himself, documented extensive

law-breaking among America's leading corporations. Decades after Sutherland's pioneering work, Clinard and Yeager also found evidence of widespread law-breaking in corporate America (Clinard and Yeager, 1980). Finally, as the past decade has demonstrated, scandals involving business organizations, both big and small, and their executives continue to be uncovered. In short, there is considerable empirical evidence that law-breaking in business is not uncommon. As one indicator of the extent of corporate deviance, take the recent spate of restatements of corporate earnings. Restatements have soared since the exposure and criminal prosecution of the executives involved in accounting fraud at Enron, World Com, and a host of other major corporations. According to a report by the General Accounting Office (GAO) between January, 1997 and June, 2002, the annual rate of earnings restatements grew by 145%. During this 5-year period, about 10% of the companies listed on the NYSE, Amex, and Nasdaq stock exchanges filed earnings restatements because of accounting irregularities (United States General Accounting Office, 2002). While the GAO does not directly say that all of these restatements involved criminal activity, the strong implication from the report is that a notable proportion of the leaders of corporate America are not above breaking the rules to their advantage—at least until they think they might get caught. If we consider that accounting fraud is only one type of white-collar offense that companies can engage in, then the figure of 10% becomes even more notable. There is no telling how high the percentage would rise if we could somehow count all of the various offenses available to corporations. Clearly, however, it would not be in the range that we would ordinarily call *rare*.

In addition, there are theoretical reasons for believing that extensive as the empirical record is, it may nevertheless greatly understate the amount of white-collar law breaking. This is because there are fundamental differences between white-collar crime and other forms of crime that affect the rate of detection. We will develop this theme more fully in the next chapter, but we briefly introduce it here. When an ordinary street crime is committed, such as, for example, a robbery, burglary, auto-theft, or assault, it is obvious that an offense has occurred. The offender may not be known, but the fact that there has been an offense is plain to see. Some sort of physical evidence is present. However, many white-collar crimes are not obvious in this way. They leave no obvious

physical evidence such as a missing car, broken window, or bloodied body. White-collar offenders use deception to commit their offenses. If they are successful, then the fact that an offense has occurred may never be known, not even by the victim. For example, think back to the doctor whom we discussed in the first chapter. If the victim in this case simply accepts the doctor's recommendations regarding further tests, then who will ever discover that the doctor committed fraud by knowingly ordering tests that were medically unnecessary? The fundamental problem here is that for crimes that are non-self-revealing it is very difficult, if not impossible, ever to figure out the true number of offenses.

A second problem with self-control theory involves the concept of self-control. The theory assumes that self-control is always exercised for conforming or socially accepted ends. In other words, the theory assumes that people with high self-control always do the right thing. Yet, there is no logical reason why self-control and the abilities associated with it (intelligence, foresight, and persistence) could not be used to plan and execute a complicated criminal scheme (Tittle, 1991). Why assume that people who have self-discipline are always nice people?

Finally, there is a problem with how criminal opportunities are conceptualized in the theory. Criminal opportunities are conceived as simple obvious things, such as an unguarded purse in an office or a car in a parking lot with the keys in it. The basic idea is that criminal opportunities arise whenever a criminally inclined person has access to some sort of object that he or she would like to have.⁶ In technical terms, a criminal opportunity consists of a suitable target and a lack of capable guardianship (Cohen and Felson, 1979). In self-control theory, it is assumed that targets such as the purse or the car are intrinsically attractive or desirable, and the only thing holding us back from trying to get them is our level of self-control. But is this really true? We would suggest that the attractiveness of a target depends at least in part on the potential offender's situation (i.e., on factors in his or her life that are independent of his or her level of self-control). For example, suppose a person with low self-control sees a car with keys in it in a parking lot. Further suppose that the offender doesn't have his own car and he really needs to get across town quickly because he is late for a date with his girlfriend. Will he steal the car? It seems pretty likely. But what happens if we change one fact. Suppose that the offender has a car. Even though

he is still saddled with low self-control and late for his date, will he steal the one with the keys in it? Now, it seems less likely than before. An offender with a car simply has less motivation to commit auto theft than an offender without a car, regardless of level of self-control. Whether a criminal opportunity is viewed as more or less attractive, then, depends in part on the external situation of the offender. Recognizing this feature of criminal opportunities is particularly important for white-collar crime, because, as we will demonstrate later, situational factors can be important sources of motivation for white-collar crime. For example, would the executives at Enron have bothered to engage in accounting fraud if the company really was making a lot of money?

Rational Choice Theory

Another theoretical perspective that has been applied to white-collar crime is rational choice theory (Paternoster and Simpson, 1993; Shover and Hochstetler, 2006). Rational choice theory assumes that all actors are self-interested and make decisions about whether to engage in criminal or conventional behavior according to an assessment of costs and benefits. In simplified terms, the theory posits that rational actors will choose to engage in crime rather than non-crime when the perceived net benefits of crime (i.e., benefits minus costs) are larger than the perceived net benefits of non-crime. Both benefits and costs have subjective and objective dimensions. A subjective cost of crime might be feelings of guilt or fear of apprehension, while a subjective benefit of crime would be the thrill and excitement of getting away with something illegal. An objective cost of crime would be formal punishment by the criminal justice system, while an objective benefit would be the gains made from the illegal act.

Like other traditional criminological theories, the rational choice perspective has been applied most often to ordinary street offenders. Paternoster and Simpson (1993), however, have explicated a rational choice theory of the decision to commit corporate crime (see also, Shover and Hochstetler, 2006). They call their approach a *subjective utility theory of offending*. It focuses on benefits and costs as they are subjectively perceived by individuals. Hence, their rational choice theory is aimed at individual decision makers rather than the corporation

as a whole. According to their theory, the individual's decision to commit a corporate crime or violate a regulatory rule involves a series of factors. To calculate the potential costs of corporate crime, actors subjectively estimate the certainty and severity of formal legal sanctions, the certainty and severity of informal sanctions, and the certainty and importance of loss of self-respect. Actors also consider the benefits of corporate crime, which include the perceived benefits of noncompliance (i.e., higher profits, greater market share, or some other organizationally relevant goal) and the perceived cost of rule compliance (i.e., expenses associated with complying with regulatory standards). Paternoster and Simpson argue that in addition to these standard rational choice variables, the strength of the actor's moral beliefs, whether they perceive rule enforcers as legitimate and fair, the characteristics of the potential criminal event, and prior offending by the person also influence the likelihood of offending.

Of the theories presented here, rational choice is the one most compatible with our opportunity perspective. It explicitly recognizes opportunity as an important cause and necessary ingredient of crime. It suggests that in order to understand patterns in white-collar crime we need to pay attention to how changes in the organization and functioning of the legitimate business world can affect opportunities for white-collar crime (Shover and Hochstetler, 2006). Indeed, as Neal Shover and Andrew Hochstetler have recently argued, new opportunities for fraud and embezzlement have emerged over the past few decades because of the expansion of government programs, the revolution in financial services, the growth of communications technology, and the rise of the global economy.

Integrated Theory

Criminologists have begun to explore ways to integrate standard criminological theories, such as differential association, anomie, and control theories, in hopes of providing more comprehensive explanations of street crime. John Braithwaite (1989) has extended this line of thought to white-collar crime and organizational crime. He argues that to understand the causes of organizational crime, we need to integrate the insights of strain, labeling, subculture, and control theories. From

strain theory, he draws the premise that failure to achieve highly valued goals, such as material success, creates pressure or strain to deviate. To relieve strain, actors, including corporate actors, may resort to crime as an alternate means of achieving success. Whether actors do resort to crime depends in part on the availability of illegitimate means for achieving the blocked goal. Illegitimate means are made available through deviant subcultures. With respect to corporate crime, business subcultures can transmit knowledge of how organizations and their leaders may successfully violate the law. In addition, deviant subcultures may attempt to force members to conform to the subculture's values and expectations. Thus, strain, the availability of subculturally endorsed illegitimate means and enforced conformity to deviant subcultural values are criminogenic forces that foster corporate crime.

Opposition to these criminogenic forces comes from social controls within the organization and from shaming imposed on offenders by the larger society. Drawing from control theory, Braithwaite argues that corporations can reduce the likelihood that their members will violate the law by strengthening internal controls against illegal behavior. This can be accomplished when organizational leaders promote pro-social values, socialize all corporate members to these values, and create strong internal control units to monitor corporate compliance with the law.

Braithwaite introduces the idea of differential shaming to explain how shaming by society may either promote or retard corporate crime. Shaming, which in the case of business corporations is carried out primarily by regulatory agencies, may be either stigmatizing or reintegrative. When actors are stigmatized, they are treated as outcasts, and their involvement in deviance is treated as an indication of a true deviant inner character. Reintegrative shaming, on the other hand, is focused on the evil of the deed rather than the evil of the actor. Those who administer the shame attempt to maintain bonds of respect with the offender, and they try to reintegrate the offender back into the social whole after shaming is terminated. Braithwaite argues that stigmatizing shaming tends to create resistance to change in actors and to push them ever more deeply into their deviant subculture. Hence, stigmatizing shaming is counterproductive. It actually promotes rather than deters corporate crime. Reintegrative shaming deters crime because it clearly announces the wrongfulness of the act but then attempts to make the

actor feel like a respected member of society, a member who has a vested interest in conforming to society's rules.

Another integrated theory has been proposed by Coleman who argues that white-collar crime results from "a coincidence of appropriate motivation and opportunity" (Coleman, 1987). Motivation refers to symbolic constructions that define certain goals and activities as desirable. In the case of white-collar crime, it is especially important that the offender be able to define his or her behavior so that it is socially acceptable. Hence, white-collar offenders use neutralizations and rationalizations to justify or excuse behavior that is illegal. For example, business executives will complain that laws and regulations are unfair or unnecessary and that they interfere too much in the operation of the free market. Breaking a law that is unfair, unnecessary, and counterproductive is more acceptable than violating a standard that everyone agrees is just and necessary for society's survival. According to Coleman, the neutralizations that offenders use to justify their crimes are rooted in what he calls "the culture of competition."

The culture of competition refers to a complex of beliefs common in capitalistic societies that hold that the pursuit of wealth and success are the central goals of human endeavor. The idea here is that striving to make a profit, to get ahead, to be successful, to be the best is the most appropriate and meaningful way to approach life. As autonomous individuals, we are each responsible for our own success, and it is appropriate to try to get ahead by whatever means are available. In other words, chasing the American dream is what we are supposed to do, and our success in doing so is a measure of our intrinsic worth as human beings (Messner and Rosenfeld, 1997). In Coleman's view, then, the culture of competition provides a source of rationalizations and neutralizations that white-collar offenders use as motivations for illegal behavior.

The other pillar in Coleman's theoretical framework is opportunity. An opportunity is a potential course of action that is made available by a particular set of social conditions and that the actor recognizes as being available to him or her. Opportunities vary in their attractiveness according to four factors: (1) the size of the gain to be obtained by the illegal act, (2) the risk of detection and punishment, (3) the compatibility of the act with the offender's own beliefs and values, and

(4) the availability of other opportunities. In short, a white-collar crime opportunity will be considered attractive from the offender's point of view when it promises a worthwhile gain, involves little chance of being caught, does not violate the offender's own personal standards of behavior, and appears more likely to accomplish the offender's objectives than any other course of action.

Exactly how white-collar crime opportunities are distributed is difficult to say with certainty. Coleman identifies four factors that influence the distribution of opportunity: law and enforcement, industries, organizations, and occupations. The law obviously determines what is criminalized, and the level of resources allocated to enforcing the law determines the relative risk of detection and punishment. As Coleman and others have noted, business organizations go to great lengths to try to prevent the criminalization of their activities and, if that fails, they try hard to limit the size and resources of enforcement agencies.

A second factor that shapes opportunities is the structure of an industry. For example, antitrust violations should be more common in industries that are heavily concentrated, that is, in which there are a few large producers, than in industries where there are many small producers. It is harder to organize and control a conspiracy involving many participants than one involving only a few. The research, however, on market structure and the prevalence of antitrust violations is mixed (Coleman, 1987:428). There are other characteristics of industries that influence the types of opportunities for white-collar crime found in them. We discuss some of these further in Chapters 5 and 6, which treat specific types of white-collar crime.

Organizations themselves shape or provide opportunities. Whether an organization is highly profitable or not so highly profitable can influence how organizational members view potential illegal acts. The types of controls that an organization has in place to deter illegal activities by its members influences opportunities, as may the structure of the organization, in particular whether it is multidivisional.

Finally, occupations present different types of opportunities. For example, attorneys, physicians, financial advisers, and other independent professionals all have opportunities to take advantage of their clients that are built into their professions. The work of professionals often occurs without the direct supervision of the client (Shapiro, 1990). This

situation gives unethical professionals the freedom to pursue their own interests at the expense of their clients. Occupational opportunities also vary according to one's position or status in an organization. For example, consider bribery of government officials. Many people work for the government, but most don't work in positions where they are likely to be offered bribes or be able to solicit bribes. Whether a government worker is likely to be offered bribes depends on the economic value of the services that the person controls (Coleman, 1987:433). People in high positions in government, such as Congressional Representatives, exert control over enormous sums of money in the form of valuable government contracts. Hence, it should not be surprising that they are lobbied and cajoled by corporations for preferential treatment and are regularly caught selling their services to the highest bidder (Rosoff et al., 2006:427–435).

To summarize, Coleman's theory works on multiple levels—individual, occupational, organizational, industrial, societal, and cultural. White-collar crime occurs when actors with suitable motivations confront attractive opportunities. Motivations for white-collar crime are rooted in the culture of competition and are disseminated via organizational and occupational subcultures. The attractiveness of opportunities depends on their monetary value as compared to other courses of action, level of risk, and compatibility with the potential offender's beliefs and values. Opportunities are distributed differently across industries, organizations, and occupations.

Greed or Fear?

Most theories of white-collar crime implicitly or explicitly assume that the pursuit of individual material success or some kind of business advancement is the core motivation behind white-collar crime. White-collar offenders are assumed to be greedy and egocentric. But recent research suggests another motivational route to white-collar crime (Benson and Kerley, 2000; Benson and Moore, 1992; Weisburd and Waring, 2001; Wheeler, 1992). White-collar crime may result not only from the drive for material success but out of a fear of losing what one already has. Some individuals may become involved in white-collar offenses because they fear that if they do not, they are at risk of losing

their station in life. For people accustomed to high social status and the material comforts of a middle-class lifestyle, the prospect of losing it all because of a downturn in the economy or a miscalculation in a business transaction may provoke strong pressure to deviate in defense. For example, someone who runs a small business may be quite willing to abide by the law in return for a comfortable but not extravagant standard of living. However, if the business is threatened by competition or a downturn in the economy, the same individual may feel that the only option is to break the law in order to survive. For example, a businessman who ran a small construction firm got involved in a check-kiting scheme because he was afraid of losing his business. He argued that his offense was motivated by his fear of losing what he had worked so hard to get (Benson, 1985:598).

I was faced with the choice of all of a sudden, and I mean now, closing the doors or doing something else to keep that business open ... I'm not going to tell you that this wouldn't have happened if I'd had time to think it over, because I think it probably would have. You're sitting there with a dying patient. You are going to try to keep him alive.

Thus, fear of failure as well as the drive for success may impel individuals to engage in white-collar crime. Indeed, the fear of failure may be a unique motivational cause of white-collar crime.

Summary

Despite their differences, the theories reviewed above share one thing in common. They all focus in some way on the offender's motivation for committing white-collar crime or some aspect of his or her personal situation or psychological make-up. Sutherland stressed the cultural norms and attitudes that prevail in the business world. Business executives are indoctrinated to these norms and attitudes and come to see illegal behavior as somehow an acceptable and necessary part of doing business. Anomie theory focuses on the widespread cultural emphases on competition and material success. These cultural emphases drive individual business executives and their organizations to constantly seek out innovative, often illegal, ways to get ahead and stay ahead. Rational choice theory directs attention to the offender's calculus regarding

the costs and benefits of illegal versus legal behavior. It is assumed that everyone, including the white-collar offender, is motivated to act in accordance with what they perceive to be their own best interests. Although control theories do not posit that any sort of special motivation is involved in white-collar crime, they do, nevertheless, draw attention to the offender's personal situation or his or her psychological makeup. It is the offender's weak social bond or lack of self-control that leads to offending. Integrated theories combine features from different theories but with the same overall objective of explaining why people break the law. Thus, in all of these theories, the focus is strongly on offenders and the factors that push or pull them toward offending.

Focusing on offenders is, of course, perfectly appropriate. Indeed, it has been standard practice throughout the history of criminology. We need to understand what causes some people to violate the law while others conform to its demands. However, motivations or personal characteristics by themselves do not explain why offenders violate the law at one time but not another, or in one place but not another. In other words, the motivations and personal characteristics of offenders cannot explain why they commit particular crimes at particular times and places. There is another factor that comes into play, and that factor is the presence or absence of a criminal opportunity.

Without some kind of criminal opportunity, even the most habitual career criminal cannot commit a crime. Bank robbers cannot rob banks if there are no banks available, and bank embezzlers cannot embezzle if they do not have a job in a bank. Banks provide opportunities for both bank robbers and bank embezzlers. Thus, to understand crime requires an analysis of both offenders and their opportunities. In the next chapter, we take up the topic of white-collar criminal opportunities.

Of course, we are not the first to recognize that opportunity plays a role in white-collar offending. All of the theoretical approaches that we have discussed in this chapter have something to say about opportunity, but the approach toward opportunity is more broad-based and less focused than the one advocated here. For example, Coleman explicitly incorporates opportunity into his theory but, for him, opportunity is found in the very structure of capitalism and not so much in the detailed characteristics of industries and occupations.

4

THE NATURE OF WHITE-COLLAR CRIME

Opportunities and Techniques

Introduction

Criminologists spend an enormous amount of time and energy investigating criminals. They ask all sorts of questions about them. What kind of person is likely to become a criminal? Why do they do it? When do they start? When do they stop? How many crimes do they commit? What kind of crimes do they commit? What are their families like? Where do they live? What kind of friends do they have? The list could go on. Of course, all of these are important questions. We hope that by answering them we will eventually understand why individual involvement in crime seems to vary so much. For a lot of reasons, we need to know as much as possible about the factors that affect involvement in crime. Indeed, throughout this book, we ask and try to answer many of these questions in regard to the people who commit white-collar crimes. Nevertheless, it is important to keep in mind that knowing about criminals is not the same as knowing about crime. People often confuse the problem of explaining crime and with the problem of explaining criminals, but the two should be kept separate (Gottfredson and Hirschi, 1990). Crime is an event, something that happens. A criminal, on the other hand, is an individual who behaves in a certain way, a way that society has defined as unacceptable. Explaining why people behave one way or another is not the same as explaining why a particular event happens at a particular time and in a particular place.

To understand why a particular crime occurs at a particular time and place, it is necessary to pay attention not only to the person who commits the crime but to the situation in which the person is located. Obviously, it is important to know about an offender's motives or reasons for committing an offense. But suppose that we know that an offender has a strong motive to, say, steal money. The desire for money, however, does not explain why he robs a liquor store as opposed to a bank that sits next door to the liquor store. Both places have the money that the offender needs. Why choose one instead of the other? Of course, there are any number of reasons why an offender might choose a liquor store over a bank. Banks often have security guards who have guns. Banks have video cameras that take pictures. If it happens to be after business hours and the bank is closed, the chances of breaking in and stealing anything are nil. Nowadays, bank vaults are virtually impregnable. Liquor stores, on the other hand, are open for longer hours than banks. They may be staffed by only one person. They may not have security cameras, and best of all, the money is right there in the cash register. So, if you look at the situation from the offender's point of view, the liquor store presents a better *criminal opportunity* than the bank, especially if the criminal is working alone and in a hurry.

Understanding Criminal Opportunities

Criminal opportunities are now recognized as an important cause of all crime (Felson, 2002). Without an opportunity, there cannot be a crime. In the past few decades, the study of crime has increasingly focused on the situational and ecological factors that create or facilitate opportunities for street crime (Clarke, 1983; Cohen and Felson, 1979; Felson, 2002). Opportunities also are important causes of white-collar crime. However, as we will show, the opportunity structures of many white-collar crimes are dramatically different from those for ordinary street crimes. These differences create special difficulties for control, but they also provide new openings for control.

What exactly is a criminal opportunity? According to routine activity theory, a criminal opportunity comprises two elements: a *suitable target* and a *lack of capable guardianship*. A target can be a person or some kind of property. What makes a person or a piece of

property suitable as a target for crime? That depends on a lot of factors. Without exploring all of them, we can identify some of the main considerations. From the offender's point of view, the attractiveness or suitability of a person as a target depends on their vulnerability and in some cases their symbolic or emotional value to the offender. All other things being equal, we assume that violent offenders would rather attack someone who is not well-equipped to fight back (i.e., someone who is vulnerable). As one researcher puts it, big people hit little people (Felson, 1996). In addition, we assume that violent offenders would rather go after someone they have a grudge against as opposed to just any random person. In other words, it seems likely that it is more fun and rewarding to beat up someone you are mad at than someone whom you don't have strong feelings about one way or the other. Thus, the main factors that determine the suitability of people as targets are vulnerability and emotional value.

There are also many factors that can make one piece of property more suitable than another. Property becomes attractive to an offender if it is portable, valuable, and fungible. The importance of value for property offenders is obvious. So, we won't dwell on it. Portability is important because if you are going to steal something, then by definition you have to move it from one place to another. That being the case, a DVD player is a lot easier to steal than a refrigerator. Lastly, there is fungibility. Something is fungible when it can be exchanged for something else. Money is very fungible. You can exchange it for just about anything. Property offenders look for things that are fungible, because ordinarily they are not interested in using the things they steal. Rather, they want to sell them for money. Thus, smart thieves try to steal things that are easy to exchange for money (i.e., easy to sell). For example, suppose you need some cash and you break into a house to steal something. Inside, you have your choice of a valuable painting or a brand new DVD player. The painting may actually be worth more than the DVD player, but which is going to be easier to sell to someone else? To sum up, all other things being equal, thieves look for property that is valuable, easy to carry, and easy to sell for money or exchange for something else such as drugs or alcohol.

The other component of a criminal opportunity is capable guardianship, or rather the lack of capable guardianship. You may think

of capable guardianship as a big strong person who can defend you or your property, but the term guardianship is meant to be interpreted in a much broader way. It is just a convenient figure of speech. By capable guardianship, we mean anything that can either physically prevent the offender from getting to the target or that can make the offender decide it is too risky to go after the target. Guardianship takes two main forms: blocking access and surveillance.

Techniques of guardianship that can physically prevent an offender from getting to a target include walls, locks, and bars on windows as well as anything else that has the effect of blocking the offender's access to the target. It makes sense to think that violent offenders look for victims who are easy to get at—that is, people who are out in the open or near the offender rather than people who are hiding behind closed and locked doors. Similarly, property offenders can be prevented from carrying out their intentions if their access to their desired target is blocked by a wall of concrete or a barred window. Of course, offenders can always try to break through whatever it is that is blocking their access. But the general point remains: blocking access makes it more difficult for an offender to carry out his or her intentions, and this makes the criminal opportunity less attractive to the offender.

Besides having their access to a target blocked, offenders can also be put off if they feel that it is too risky to attack a particular target. By risky we mean the risk to the offender of being observed or otherwise detected either while committing the crime or afterward. So, if a target, be it a person or a piece of property, is under surveillance by a police officer, a neighbor, a security camera, an alarm system, or anything else, potential offenders have to take this into account. Surveillance increases the likelihood that the offender's actions will be noticed, and accordingly, the offender faces an increased risk of being caught. Thus, surveillance reduces the attractiveness of criminal opportunities. This is why, of course, security cameras are now ubiquitous in retail establishments, other buildings, and increasingly, public streets.

The Nature and Techniques of White-Collar Crime

Criminal opportunities are exploited through the use of particular techniques. That is, in order to take advantage of a criminal

opportunity, the offender often has to know how to use a particular technique. Indeed, sometimes it is the availability of a technique that determines whether a situation presents a criminal opportunity or not. For example, an auto thief who knows how to hot-wire a car has many more opportunities to steal cars than does a thief who does not know the technique of hot-wiring. The unskilled thief must spend time looking for cars with the keys in them, while the skilled thief can go after any car that is unguarded. Thus, in order to understand criminal opportunities, we have to learn about the techniques that offenders use to commit particular types of crimes. This is especially true in regard to white-collar type crimes. The techniques of white-collar crime are distinctly different from the techniques of other sorts of offenses. Thus, it is time now to explore the matter of techniques in a more systematic fashion.

First, exactly what is a “technique”? The dictionary definition of technique that is most appropriate for our purposes here is “a method for accomplishing some desired aim.” Thus, a technique is a way to get something done. Obviously, depending on what you want to get done, there may be different techniques that you can use. For example, a burglar’s technique for breaking into a house might involve carefully drilling a hole in a door, then using a needlepoint saw to enlarge the hole, then reaching inside to unlock the door, and then sneaking in to steal silver or jewelry. Most burglars don’t do this. They use a simpler technique: kick the door hard until the doorframe or the lock breaks, then dash in and grab whatever is out in the open, looks valuable, and is small enough to carry.

There are several important points to notice about this example. First, regardless which technique was used, the burglar employed physical means (drilling a hole or kicking in the door) to accomplish the goal. Second, the burglar was somewhere he or she was not supposed to be and doing something that is obviously and clearly illegal. Third, the burglar was in direct contact with the victim or target of the offense, which in this case would be the homeowner’s property. Fourth, the victim is a specific identifiable individual—in this case, the homeowner. Finally, the illegal activities that made up this offense (kicking in the door, grabbing the stuff, running away from the house) took place at a discrete point in time and space. We can specify exactly where and

when the event happened: 6990 Bramble Hill Drive on Tuesday, May 18, 2004, at 2:30 PM.

Many conventional street crimes are like this. They involve physical actions. There is direct contact between the offender and a specific target or victim of the illegal activities. They are obviously illegal while they are occurring, and they occur at particular places and times.

White-collar offenses, on the other hand, often are not like this. They don't involve physical actions except in the most trivial sense that we move our bodies or parts of our bodies whenever we do anything. The physical activities of white-collar crime are very simple commonplace activities such as writing, or talking on the phone, or entering information into a computer. Unlike our burglar, white-collar offenders do things differently. They often have a perfect right to be where they are and where the offense occurs. The offense itself may not involve any direct physical contact between the offender and the victim or the target of the offense. Finally, the offense typically will not be obviously illegal while it is occurring. In short, many white-collar offenses manifest the following three properties: (1) the offender has *legitimate access* to the location in which the crime is committed, (2) the offender is *spatially separated* from the victim, and (3) the offender's actions have a *superficial appearance of legitimacy*.

To illustrate how these properties come together in a particular type of white-collar crime, consider physicians who defraud Medicare. This type of white-collar crime usually is committed from within the comfortable confines of the physician's own office (legitimate access). There is no physical contact between the offender, in this case a physician, and the victim, in this case a government program. A computer is used to file a fraudulent claim for payment for services (spatial separation). The physician doesn't break into the offices of the Medicare program and steal some money. He or she simply sends in an electronic form with false information and sits back to wait for the Federal government to write a check. If the physician is clever and files a form that looks legitimate, then no one, including government officials, may ever know that something illegal has taken place (appearance of legitimacy).

Of course, not all white-collar crimes manifest all of these characteristics. Some, for example, do involve direct contact between the

offender and the victim. White-collar crimes come in a bewilderingly large variety. Nevertheless, it is important to try to identify the key characteristics that appear in many white-collar offenses. They are important because they affect how white-collar offenses are carried out as well as our ability to develop effective prevention strategies.

So, how do white-collar offenders carry out their crimes? They use three main techniques. In order of importance, the techniques are (1) deception, (2) the abuse of trust, and (3) concealment and conspiracy. For analytical purposes, we consider each of these techniques separately but, in the real world, more than one of them may be involved in any particular white-collar offense.

The primary technique used by white-collar offenders is deception. It is the master *modus operandi* of white-collar offenders. Indeed, the other two techniques that we will be discussing—abuse of trust and concealment—are in a sense simply very important ways in which deception may be accomplished or situations in which it is particularly easy to deceive others.

Deception is a commonplace word, and we do not need to make it too complicated. However, because it is such a familiar word, it is easy to gloss over some of the conceptual subtleties that are involved in deception. For the study of white-collar crime, it is important to think carefully about exactly what deception is and how it is accomplished. Deception occurs when one person misleads another by making things appear other than as they really are. Or, more formally, we could say that deception occurs whenever one person or organization causes another to experience a discrepancy between appearance and reality (Rue, 1994:84). From the point of view of the person who is doing the deceiving, deception is “the advantageous distortion of perceived reality” (Bowyer, 1982). On the other hand, for the person on the receiving end, the distortion of reality definitely is not advantageous.

Deception is always a relational phenomenon. That is, it is a characteristic that describes the nature of the interaction between two entities—the deceiver and the deceived (Rue, 1994). The relational nature of deception complicates its analysis. In order to be sure that deception has occurred, we have to know something about the intentions of the person or organization that is creating the deception. We also have to know something about the perceptions of the person

or organization that we think is the object of the other's attempt at deception. Deception occurs only when two conditions are met. First, one person must deliberately intend to mislead another about the nature of reality, and second, the other person must be misled about reality, must misperceive it, that is. As we will see later, the relational nature of deception makes it difficult to control the offenses which use this technique.

Deception requires a deliberate attempt by one person to mislead another into doing something that they would not do if they had all the facts (i.e., if they hadn't been deceived). We say deception requires one person's misleading another only for rhetorical convenience. Obviously, deceptions can be carried out by groups of people working together to take advantage of individuals or groups of other people. But to continue with an example, suppose the owner of a business applies for a loan from a bank and, on the loan application, the owner deliberately overstates her financial assets and understates her financial liabilities. She does this in order to make her financial status appear better than it really is in the hope that the bank loan officer will approve her loan application. Obviously, she is engaging or attempting to engage in deception. She is also committing the crime of making false statements on a loan application.

Deception by virtue of false or misleading statements is a common technique of white-collar crime. It underlies all consumer fraud-type cases, not to mention a good bit of most advertising. There is no shortage of examples of false and misleading advertising by major manufacturers in which the goal is to convince consumers that a particular product is a better value than its competitors. For example, a famous case involved a television commercial for Rise shaving cream in which a man was shown applying "ordinary" lather to his face. The lather dried out almost immediately as the man tried to shave. Then, the man applied Rise shaving cream and it stayed "moist and creamy" throughout his shave. What the manufacturers of Rise neglected to mention in their commercial was that the "ordinary" lather was not shaving cream at all. Rather, it was a special aerosol substance that was designed to come out in a big puff and then fade away almost immediately (Preston, 1975). The Campbell's Soup Company once promoted its "chunky style" soup by putting marbles in the bottom

of the bowl so that the soup would appear absolutely filled with meat and vegetables—in other words, “chunkier.” There is no shortage of other examples ranging from large multinational corporations to small retail stores.

Exactly what counts as being deceptive can be complicated to determine. Deceptiveness is subjective. What fools one person might not fool another. Deception can be complex or simple. It can involve an orchestrated advertising campaign by a large company or a simple misstatement of fact by an individual applying for a bank loan or a government benefit. It can involve the actions of individuals against large organizations, or the actions of large organizations against individuals, or individuals against individuals, or large organizations against other large organizations. These variations in the nature of the relationship between the person or organization being deceived and the person or organization doing the deceiving will be important to consider when we come to the topic of preventing white-collar crime. However, for our purposes now, the important point to note is that the use of deception is one of the standard techniques of white-collar crime. As we review different types of white-collar crime in subsequent chapters, we will want to identify how they are based on deception, to think about how this form of deception, whatever it may be, is possible, and to explore how we can reduce the likelihood that the deception will be successful.

Deception is closely related to the next technique—the abuse of trust. Abuses or violations of trust occur in what are called “agent-client relationships” or simply “agency relationships.” An agency relationship arises whenever an individual or an organization is authorized to “act for” or “on behalf of” another individual or organization (Shapiro, 1990). We call the person or organization who acts for someone else *the agent*. The other party to the relationship is called *the principal*. Typically, agents provide principals with some sort of specialized service based on the agent’s expertise or training. They do things that we don’t have the ability, expertise, time, or willingness to do for ourselves. As principals, we place our trust in agents and hope that they will act in our best interests. But agents sometime abuse the trust that we place in them through the use of some form of deception. For example, suppose you have some money you want to invest in the stock market but you

don't feel confident about picking stocks yourself. So, you contact a stockbroker and ask her for some advice in picking stocks and help in buying them. The stockbroker agrees to take you on as a client. You give her your money with the understanding that she will invest it in the market for you. You are now in agency relationship based on trust. You hope that the stockbroker, your agent, will take good care of your money and invest it wisely. It is her duty to use her professional skills to invest your money so as to help you achieve your financial goals. However, she may not do this at all. She may simply take your money and run off with it. She may foolishly gamble with it in high-risk stocks and lose it all. She may advise you to buy stock in a company that has promised to pay her a kickback for every new client she brings in. In short, she could do a lot of things that would violate the trust you placed in her when you asked her to be your broker.

Agency relationships can vary in many ways (Shapiro, 1990). In some relationships, the principal exerts a great deal of control over the agent, which reduces the chances that the agent can take advantage of the principal. Some agency relationships involve a one-to-one interaction between the agent and principal, as in our example above with you and the stockbroker. Other relationships involve an agent who acts on behalf of a large number of principals. For example, if you work for a company that has a retirement plan for its employees, the people who manage the pension fund are agents for all of the employees who participate in the retirement savings program. These variations in how agency relationships are structured influence opportunities for fraud and abuse by agents.

The main trouble with agency relationships is that they are unbalanced (Shapiro, 1990). Agents typically have access to much more information than principals do. Thus, the agent's actions may be based on factors that you as the principal have no way of knowing about. In the stockbroker example given above, the broker obviously has access to a lot more information than you do about the stock market. That's why you went to her in the first place. In addition, what the agent does for you is hidden in the sense that you usually don't actually observe the agent as he or she works. You assume that your broker is taking your money and investing it for you, but you probably don't sit in her office and look over her shoulder as she makes transactions. Next, agents often may

have control over your property, which they can use to their advantage. Finally, there is a built-in ambivalence in agency relationships. This ambivalence arises out of the potential conflict between the principal's interests and the agent's own self-interests. The people who act as your agents—stock-brokers, accountants, financial advisors, doctors, pension fund managers, and so on—all have to make a living themselves. Thus, in addition to looking out for you, they are also looking out for themselves. They're trying to make a living, and sometimes what is good for their interests may not be good for yours and vice versa. As Susan Shapiro notes, in the modern world, agency relationships are problematic but unavoidable. Hence, we are all potential victims of the abuse of trust.

The degree to which agency relationships are unbalanced and to which the agent's actions are hidden from the principal can vary. Large private corporations, for example, are usually run by professional managers who in effect act as agents for the owners of the company. Some owners take a very active role in their company's day to day operations. They may know as much about what is going on as the professional managers. In this type of situation, the managers, as agents, may not have an information advantage over the principals, the owners. Active, participatory owners make it difficult for managers to hide what they are doing. This type of agency relationship is not as unbalanced as one in which the principal has less power over the agent and is more likely to be disadvantaged in information.

Finally, like the abuse of trust, concealment and conspiracy are important ways in which deception is achieved. They are also important techniques used by white-collar offenders. Concealment and conspiracy are also used by ordinary street offenders but for a different purpose than white-collar offenders. For ordinary street offenders, concealment may be used to hide the offender's identity. In the case of white-collar crime, it is used to hide the crime. For example, a couple of robbers might work together to rob a liquor store. Perhaps one would hang around outside the store and observe traffic patterns, while the other went inside and checked out the layout of the store: where the cash register is located, how many people are working, whether there are any security cameras, and whether there is any sign that whoever works in the store has a firearm. Then, the robbers might meet and compare notes to decide the best time for their attack, presumably when the store

is relatively empty and the cash register relatively full. They might also decide to wear masks to hide their identities. They try to do whatever they can to ensure that when they initiate the robbery, it will go as quickly and efficiently as possible. They want to get in and out fast, and they hope that no one will recognize them in the process. In this case, the would-be robbers are conspiring to hide the true nature of their activities until the time of the robbery, and then they hope to hide their identities from the victims and the police. Once the robbery gets started, however, it becomes blazingly obvious that a crime is underway. It is easy to imagine other sorts of offenses in which offenders engage in similar clandestine activities before the offense occurs.

White-collar offenders also conspire to hide the true nature of their activities but in a way different from that of conventional offenders. In the case of many white-collar crimes, the conspiratorial activities of the offenders are designed to hide the crime itself. The object of the conspiracy is to conceal and coordinate activities so as to illegally benefit the members of the conspiracy without ever revealing that anything illegal has taken place. Price fixing is a good example. In his famous study of price fixing in the heavy electrical equipment industry, Gilbert Geis describes how executives from the major manufacturers of electrical equipment would meet and communicate with one another in secret to coordinate the bids that they gave to the purchasers of heavy electrical equipment (Geis, 1977). Rather than competing against one another by submitting their bids in isolation from one another, these executives would decide among themselves in advance who was going to win each contract. The chosen company would then be allowed to submit the "low" bid on the contract, while all of the other companies submitted slightly higher or otherwise less competitive bids.

Although this case eventually came to light and the executives were charged and convicted, it went on for several years before the price-fixing conspiracy was uncovered. Only after detection did it become apparent that laws had been broken and crimes committed. Indeed, the conspiracy came to light only because the executives apparently made the mistake of submitting identical bids in sealed envelopes in response to a contract solicitation from the Tennessee Valley Authority (Geis, 1977). To the Tennessee Valley Authority officials, it seemed highly unlikely

that they would receive identical bids for the highly technical electrical equipment that they wanted to purchase. The officials complained to the federal government, which then initiated a grand jury probe that eventually uncovered the facts of these antitrust violations. If the conspirators had been more clever and submitted bids that were not identical but just similar, there is no telling how long the price fixing would have gone undetected.

Stock manipulation is another example of a white-collar offense that is based on concealment and conspiracy. As described by Susan Shapiro (Shapiro, 1984:14–15), stock manipulation typically involves a group of individuals who secretly work together to orchestrate the buying and selling of a particular stock in a manner designed to drive up its price. Misleading publicity and gossip about the stock are used to reinforce the appearance that the stock is becoming a hot item that will continue to rise in value. At some point, when the price has risen high enough, the conspirators sell all of the stock that they had previously bought at a low price and take their profits.

In these cases and in others that rely on concealment and conspiracy, the perpetrators of the offense try to take advantage of how our economic system works by mimicking legitimate activities. In a capitalistic free-market economy, such as ours, we assume that the costs of goods and services are set through competition between producers and the principles of supply and demand. We assume that stock prices reflect objective evaluations made by honest buyers and sellers of the value of particular stocks. White-collar offenders can violate these assumptions through the use of concealment and conspiracy to enrich themselves or their organizations illegally.

Reconsidering Sutherland: Techniques and Power

Sutherland urged criminologists to acknowledge and to investigate the crimes of the powerful. For this, he is rightly remembered and venerated. Regardless of whether you agree or disagree with his approach to white-collar crime, there is no doubt that without his fundamental insights, criminology would have been impoverished, and our society would be even more vulnerable to the abuses of the rich and powerful than it already is. Thus, it is important to remember Sutherland's basic point

that wealthy and powerful individuals commit occupationally related crimes that cause great social harm.

However, we believe that Sutherland's analysis can be extended by investigating not only who the white-collar offender is but also how white-collar offenses are committed—that is, on the techniques used by white-collar offenders. We believe that this focus on techniques will permit us to develop a firmer understanding of how and why these crimes occur. We also believe it will shed new light on the problem of control by directing our attention toward the strategy of fighting white-collar crime by blocking crime opportunities.

Even though we intend to concentrate on techniques and opportunity structures, we will not ignore Sutherland's concern with power. Indeed, the economic and political power of white-collar offenders is important precisely because it provides them with access to opportunities and facilitates their ability to deceive, to conceal, and to abuse trust. White-collar offenders also use their economic and political power to shape the legal environment—both criminal and regulatory—within which they operate. Their ability to shape the legal environment directly affects opportunity structures for white-collar crime. Thus, social and economic power plays a central role in the rest of our analysis.

Summary

White-collar crimes are different than ordinary street crimes in regard to their opportunity structures and the techniques that are used to commit them. In this chapter, we have identified three important features of white-collar crime: specialized access, the superficial appearance of legitimacy, and spatial separation from victims. Of these features, specialized access is probably the most important (Felson, 2002). It is the offenders' access to a particular occupational or organizational role that provides the access to the crime target. Specialized access helps offenders to paint their actions with a superficial appearance of legitimacy and also often allow them to separate themselves from any direct contact with individual victims.

This chapter makes the argument that white-collar crimes are based on deception, which, following Bowyer (1982), we have defined as the "advantageous distortion of reality." The trick for the offender is to hide

the crime, to make what is illegitimate appear legitimate. Offenders who are in trust relationships with their victims often are in particularly good positions to accomplish this task. Deception can be achieved in different ways. As we show in the next chapter, some offenders try to make their illegal activities blend in with legal activities, while others simply try to conceal what they are doing.

OPPORTUNITY AND WHITE-COLLAR PROPERTY CRIMES

Introduction

The literature on white-collar crime has been criticized by some for its over-reliance on typologies. And it is true that those who teach and write on the subject often organize their material in typological fashion, devoting attention to different types of crime. In the recently published *Encyclopedia of White-Collar and Corporate Crime*, for example, entries have been penned on no less than 68 different types of white-collar and corporate crime (Salinger, 2005), ranging from accounting fraud to wire fraud. The underlying criteria that govern these typologies are rarely the same and rarely internally consistent. For example, an examination of two popular texts—*Profit Without Honor* (Rosoff, Pontell, and Tillman, 2006) and *Trusted Criminals* (Friedrichs, 2007)—reveals crimes categorized according to their victims as in “crimes against consumers” and according to their perpetrators as in “crimes by professionals” or “crimes by employees.” Sometimes the industry in which the crime occurs is the determining factor, as in “securities fraud,” while at other times, it appears to be the specific type of offense itself, as in “antitrust offenses” or “bribery.” The *Encyclopedia* pays particularly close attention to preciseness, including entries on such highly specific and esoteric forms of white-collar crime as “debt restructuring fraud” and “nonprofit organization fraud.”

The main complaints against typologies are that they imply that white-collar crime is somehow special or distinct from other sorts of crime and that it, therefore, requires a different type of explanation or explanations. Thus, the typological approach is seen as not well-suited to developing general theories of crime (Hirschi and Gottfredson, 1987a). Although we have argued throughout this book that white-collar offenses have unique characteristics, we appreciate that typological approaches make general theorizing difficult. Nevertheless, in this chapter, we follow tradition and present our material in typological fashion. Our main reason for doing so is that the opportunity perspective advocated here requires it. The opportunity perspective assumes that particular crimes have particular opportunity structures (i.e., conditions that make a white-collar crime possible or attractive to a potential offender). The necessary conditions may vary substantially from one white-collar offense to another. Thus, the opportunity perspective prompts us to focus on highly specific forms of crime.

In this and the following chapters, we apply the opportunity perspective to specific forms of white-collar crime. Obviously, as noted above, there are many different ways of looking at white-collar crime and many different forms. We cannot cover all of them here. Instead, we take a representative sample of well-known and important types of white-collar crime and use them to illustrate how our approach would work. Our goal is to focus on how the different offenses are committed. We hope that understanding how an offense is committed will suggest ways in which to prevent or reduce similar offenses in the future.

Because we are focusing on “how” particular white-collar offenses are committed, we leave aside for the time being the issue of “why” they are committed. That is, at this point, we assume that a motivated offender is present without attempting to understand exactly what his or her motivations are or what causes him or her to engage in the offense. However, in many cases, it is safe to assume that the underlying motivation for white-collar crime is financially based. Indeed, white-collar offenders often are motivated by one or more of four objectives: to benefit themselves financially, to benefit the financial standing or competitive position of a company or an employer, to stay in business, or to avoid losing financial assets.

The white-collar offenses that we cover in this chapter include health care fraud, fraud in banking, antitrust violations, securities fraud, and consumer fraud. We group these offenses together because their effects are primarily financial and not physical. In the following chapter, we cover two types of offenses that often do have physical effects and that raise more complicated issues with respect to their opportunity structures—environmental offenses and workplace safety offenses. For each offense, we first present some background material that explains the structure of the industry or business activity out of which the offense arises. Then, we examine the opportunity structure for each offense. In all cases, there are a variety of different types or subtypes of each offense within each of our general categories. For the sake of brevity, we concentrate on only a few of the subtypes. We begin by discussing a type of offense that is exceedingly widespread and costly: fraud in the health care industry.

Fraud in Health Care

The health care industry is the largest single industry in the U.S. economy. Since the late 1990s, it has accounted for roughly 15% of the United States gross domestic product (Bolmey, 2002). Considering that the United States has a trillion-dollar-plus economy, it's certain that big numbers are involved. What does the health care industry comprise? Obviously, doctors and all of the medical services that they provide are a part of the industry, but only part. The health care industry also includes hospitals, treatment centers, nursing homes, outpatient clinics, testing laboratories, and a host of other health-related facilities and programs. Any sort of organization that provides any kind of medical service is part of the health care industry. It also includes all of the companies that provide medical equipment and supplies, which can range from Band-Aids to advanced magnetic resonance imaging machines. As we will see, there are also companies that provide record keeping, accounting, and billing services for health care providers and organizations. Finally, of course, there are the pharmaceutical companies. So, it's a big industry, involving a lot of money. Unfortunately, a lot of the money that goes into the health care industry is lost to fraud and abuse.

Just how much is lost? Nobody knows for sure, but it is estimated that as much as 10% is lost annually to fraud and abuse (Sparrow, 1998). Considering that more than \$1 trillion is spent annually on health care, the amount lost to fraud may exceed \$100 billion per year. This works out to about \$238 million per day or \$11 million per hour.

Anyone who is involved in the health care industry can be an offender. This includes not only physicians but pharmacists, health care organizations, testing laboratories, medical suppliers, and companies that manage billing and records for health care organizations. When most people think of health care organizations, they think primarily of hospitals. However, there are many other types of health care organizations, such as home health care providers, nursing homes, psychiatric clinics, substance abuse programs, and mental health facilities. All of these organizations potentially can be sites for fraud. Finally, in recent years, there is evidence that organized criminals and con artists have gotten into the lucrative business of fraud in health care.

In order to understand why fraud is such a huge problem in the health care industry, we must first understand how the industry works. The most important thing to know is that most of the money spent on health care is not spent by individual consumers. This is unlike most other industries that provide services and products to consumers. If you go to a restaurant and order a meal, you pay for it. If you buy a car, you pay for it. If your car needs to be fixed, you go to a mechanic and you pay for it. In all of these transactions, you have a vested interest in making sure that you get your money's worth. But for most of us, health care doesn't work like this. Most health care costs are covered by insurance. The costs are paid, at least in part, either by a private insurance company or by one of the two big government insurance programs—Medicare and Medicaid. What this means is that the people who pay are not the people who receive the medical service, whatever it might be. This difference in the structure of the industry is crucial to understanding the opportunity structure for different forms of health care fraud.

To demonstrate the significance of the structure of the health care industry, let's consider a few diagrams. The first diagram is an idealized illustration of how the health care system in theory is supposed to work.

In Figure 5.1, here's what happens. An elderly patient goes to a doctor and receives some sort of medical service. Let's say it is a minor surgical procedure performed in the office. The doctor's office submits a claim for reimbursement to Medicare. (Note: Keep in mind that any of a number of health care providers and health care organizations could take the place of the physician and submit the claim. Our example uses a physician only to keep things simple.) The claim is reviewed by an agent at Medicare. After the agent has determined that the claim form is acceptable, a check is sent to the doctor's office.

You may have noticed that the agent in Figure 5.1 does not look very happy. That's because he's got a lot of work to do. On average, the Medicare system receives literally millions of claims per year, far too many to be checked individually by real people. As a result, the Medicare system really operates as depicted in Figure 5.2, where the agent has been replaced by a computer. The computer reviews the claims and, based on certain decision rules, decides whether it should be paid.

Considering how the health care industry is organized, where are the opportunities for fraud? The key point in the cycle presented in Figure 5.2 occurs when the health care provider submits the claim to Medicare. That is the point at which fraud can occur. Figure 5.3 shows a simple example of how an ill-intentioned physician could take advantage of this

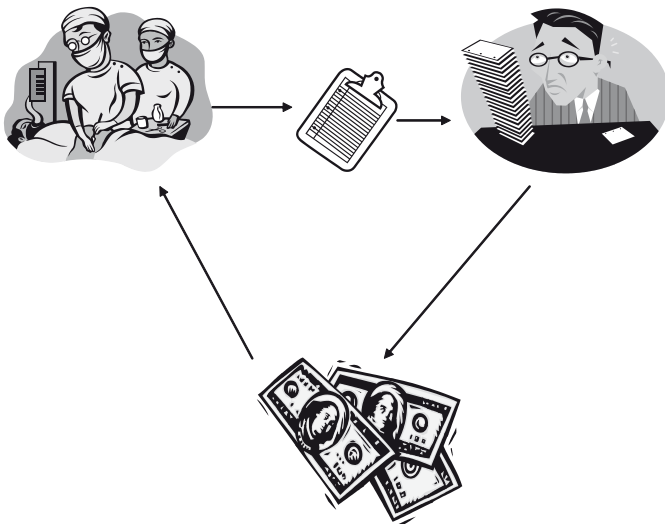


Figure 5.1 The ideal medical insurance system.

system. In Figure 5.3, the physician simply sits in his office and submits a claim form even though he or she did not actually treat a patient. However, the form submitted in Figure 5.3 looks just like the form submitted in Figure 5.2. That is, it looks legitimate, and the computer authorizes payment to the doctor. There are many variations on this theme and many ways of subtly changing the fraudulent information

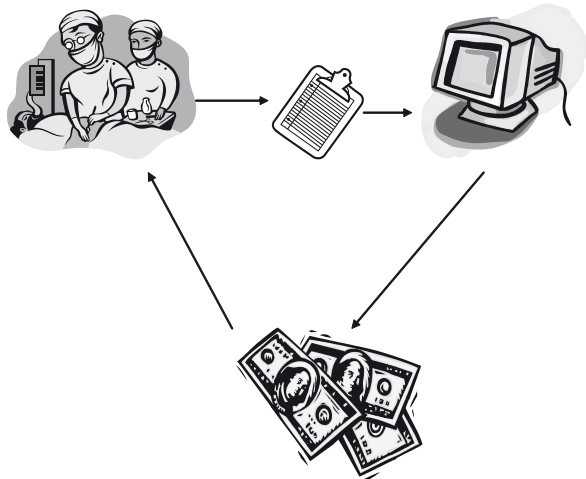


Figure 5.2 The reality of the medical insurance system.

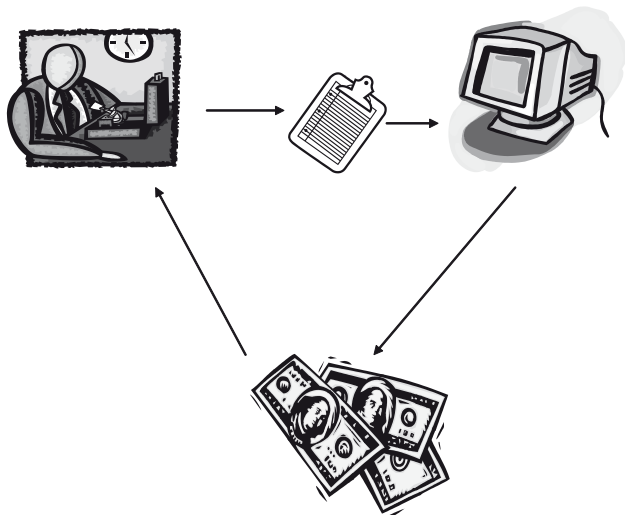


Figure 5.3 Ripping off the medical insurance system.

that is submitted as well as how it is submitted (Moffat, 1993). However, in a nutshell, that is how many health care frauds work. A claim is filed with Medicare, Medicaid, or a private health insurance company that does not accurately reflect what actually happened in the field.

For example, a more systematic variation on the physician's scam and one that can produce a lot of money in a short period of time is called the "rent-a-patient" scheme (Hast, 2000). The scheme involves a network of individuals, often including legitimate physicians. It works as depicted in Figure 5.4. "Recruiters" solicit patients, called beneficiaries, often from low-income housing projects and retirement communities, and take them to a local clinic. Recruiters are paid a commission for the patients they round up, and they pay the patients a fee out of their commission. The patients understand that if they really need a doctor, they should go someplace else. At the clinic, a cooperating physician or medical student performs a very cursory exam and then writes referrals for further tests, treatment, or medical equipment. The physicians sign charts for the services that they don't really provide or for equipment that patients don't really need. Medicare or Medicaid is then billed for these fictitious services and equipment.

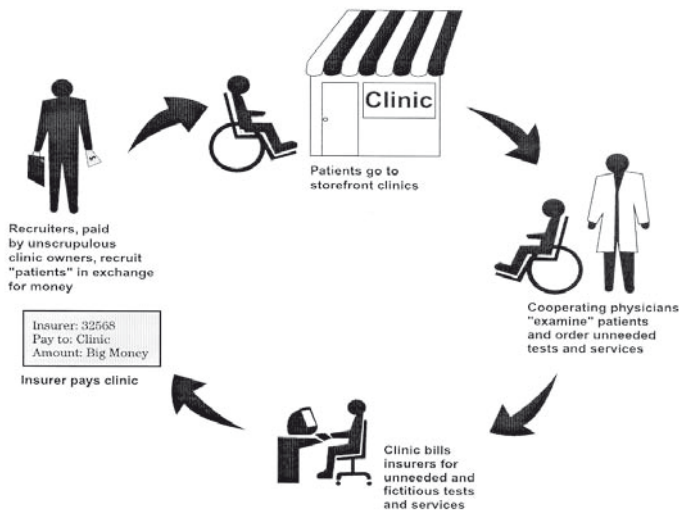


Figure 5.4 Rent-a-patient scheme. Hast (2000)

You shouldn't think, however, that only physicians are defrauding the health care system. In recent years, the FBI has investigated a number of high-profile cases of massive fraud by large organizations. For example, in 2005, GlaxoSmithKline, one of the largest pharmaceutical companies in the world, paid the federal government \$140 million to settle allegations of fraudulent drug pricing (Loyd, 2005). Health Care South paid the United States government \$327 to settle allegations of fraud against Medicare and other federal programs. In another case, 20 individuals were convicted for their involvement in a sophisticated scheme to defraud Medicare. The convictions involved the largest certified home health agency in Miami (Anonymous, 2007). The agency was paid more than \$100 million in Medicare funds for reimbursement of services, including nursing and home aide visits. These services either had not been provided, were not necessary, or were provided to people who were not eligible. In another case, Fresenius Medical Care North America, Inc., the world's largest provider of kidney dialysis products and services, agreed to pay the U.S. government \$486 million to resolve an investigation of fraud at National Medical Care, Inc., a subsidiary of Fresenius (Rowland, 2005). The list of cases could go on, but as these two examples indicate, the amounts of money involved can be huge.

Health care fraud illustrates to perfection the defining characteristics of white-collar crime. All health care providers and health care organizations have legitimate access to patients and to the various government programs and private companies that provide health care insurance. Even though the offenders are stealing from the government and insurance companies, they are spatially separated from them. Finally, their actions have the superficial appearance of legality. Indeed, they depend on the appearance of legality, because in order to get paid, those who commit fraud must submit claims that look routine and legitimate.

As we noted earlier, the key point in the opportunity structure for health care fraud is when the health care provider submits a claim to an insurer. As a thought experiment, imagine that insurers could instantly verify whether the information submitted on the claim truly represented what happened in the field and furthermore that it was medically necessary. If this were the case, then health care providers

would have no opportunity to commit fraud. However, for a number of reasons, this ideal situation is far from reality.

Part of the problem stems from the size, complexity, and structure of our health care system. In the case of Medicare alone, about 800 million claims are filed per year. Because there are so many claims, it is impossible to review all of them carefully to make sure that they are legitimate. So, most claims are reviewed by computers. On the one hand, this is good because computers are fast and they can process claims quickly. On the other hand, it is bad because computers do only what they are told to do, and they are not very good at looking for unusual patterns in data. People who want to defraud the health care programs can take advantage of this fact.

Another part of the problem is that controlling fraud takes time, personnel, and money away from processing claims (Sparrow, 1996). Government programs, such as Medicare and Medicaid, and private insurance companies are under a lot of pressure from physicians and the rest of the health care community to process claims as efficiently and fast as possible. Honest physicians want to be paid quickly and with a minimum of hassle. Thus, for health insurers, there is a constant tension between using resources to control fraud and using resources to process and pay claims quickly. Computers can be programmed to catch simple obvious frauds, such as when a doctor claims to have operated on 100 patients in a day, but computers are less adept at catching fraudulent claims that are not obvious. Sophisticated fraudsters deliberately design their schemes so that they look legitimate. They test the system and learn from their mistakes about what is acceptable and what is not. For example, when a claim comes in that the computer recognizes as not acceptable, this does not automatically trigger an investigation that might uncover fraud. Instead, the claim is simply rejected. Unfortunately, this means that the offender learns what does not work and gets away to try another day.

Fraud in the Banking Industry

As with health care fraud, in order to understand how fraud in the banking industry works, we need to understand the structure of the industry. Think about how banks work. You deposit money in a bank. You do

this because the bank promises to keep your money safe and to provide certain services, such as check writing and access to ATM and electronic funds transfer (EFT) cards. These services make it easier for you to use your money. You don't have to carry it around with you. So, it's a good deal for you. In addition, assuming you have enough in your account, the bank pays you interest on the money you keep there. But the bank, of course, does not actually keep your money in the safe. Rather, they loan it to other people and charge them interest. The bank makes money on the difference between the interest it pays you and the interest it collects from borrowers. Banks can also make profits on the fees that they charge depositors for services such as check writing and ATM privileges. Banks compete for depositors and for borrowers by offering better services and interest rates. They are under pressure to offer high rates on deposits to attract depositors and low rates on loans to attract borrowers. The more deposits a bank has on hand, the more loans it can make, and in theory the more profits the bank owners can make.

Because banks handle other people's money and because they are so essential to the functioning of the economy, they are heavily regulated. Not surprisingly, many of the regulations deal with how banks handle, keep track of, and loan out depositors' money. For example, regulations require banks to keep a certain percentage of their deposits in "reserve," which means the money cannot be loaned out and must be available for depositors. Other regulations deal with how banks make loans and to whom they make them. In theory, banks are supposed to make loans only to qualified borrowers for reasonable purposes. They are not supposed to make risky loans (i.e., where the chance that the borrower might default is too high). Also, bank owners are prohibited from borrowing money from their own bank. As we will see further, the process of making loans provides opportunities for fraud.

There is one other important aspect of the banking industry: deposit insurance. Deposits in federally chartered banks are insured by the Federal Deposit Insurance Corporation (FDIC) up to \$100,000. This means that if a bank collapses or goes out of business, the bank's depositors do not lose their money. Rather, the FDIC steps in, takes over the bank, and reimburses the depositors.

Banks handle a lot of money, and money is an attractive target for white-collar offenders. The trick for any aspiring white-collar offender

is to figure out a way to get access to the money and take it without having to point a gun at someone and take it by force. Let's examine how you can do this.

In the banking industry, fraud can work in both directions. That is, banks and bank owners can be either the victims or the perpetrators of fraud. We are going to concentrate primarily on fraud by bank owners rather than fraud against banks, but to be fair, let's quickly take a look at fraud against banks.

Banks can be victimized by their own employees through the crime of embezzlement, as, for example, when bank employees take deposits and convert them to their own use or when they make unauthorized withdrawals from accounts for their own use. More interestingly, banks can also be victimized by scam artists or by "legitimate businesspeople," who fraudulently get loans from banks by making false or misleading statements on loan applications. As you might suspect, before a bank will loan you money, it requires you to fill out an application and to explain what you want the money for, how you plan to repay the loan, what your assets are, and what your debts are. Lying about these matters is a way to get access to the bank's money and to use it for your own purposes. Banks, of course, are aware of this possibility, and they have a vested interest in making good loans. As a result, banks generally try to scrutinize loan applications very carefully as a way of guarding themselves against this type of fraud.

Now, consider the other side of the coin: fraud inside of banks. During the savings and loan crisis of the 1980s, William Crawford, who was then Commissioner of the California Savings and Loans, noted that "the best way to rob a bank is to own one" (Black, 2005). If you think about it, you can see that Mr. Crawford was absolutely right. If you are on the outside of a bank, it's hard to get access to the bank's money. However, if you are on the inside, and particularly if you are a bank owner, you have legitimate access to the money. Outsiders have to trick someone on the inside into giving them money by making false statements on loan applications. Insiders, on the other hand, have control over the money and can take it. They merely have to hide the fact that they are taking it illegally.

For example, one way for a bank owner to take the money is to borrow the money via a loan made on very favorable terms. You will

recall, however that regulations prohibit self-borrowing. To get around this obstacle, bankers can make what are known as “nominee” loans, in which a loan is made to a friend or co-conspirator who acts as a front person for the banker. Another strategy is for two bankers to set up a reciprocal loan arrangement in which banker A makes a loan to banker B and banker B makes a loan back to banker A. This way both bankers get access to money that they couldn’t get otherwise. These strategies were used extensively in the famous savings and loan (S & L) scandal of the 1980s (Calavita and Pontell, 1990).

Another offense that occurred frequently in the S & L crisis was making unlawfully risky loans: a loan for which there is a high risk that the borrower will default. Now if you were a banker, what would be the point of deliberately making a risky loan? Recall how banks work. They make their money from the interest paid on loans. So, the more loans that you make, the more active and profitable you look. You might also be willing to make a risky loan to someone you were in business with or to someone who offered you a bribe or kickback from the loan. There is an added wrinkle to making risky loans. Besides the interest they charge, banks also make money from what are called “points.” A point is a percentage, usually one hundredth, of the loan’s value that the lender charges the borrower. So, if you borrow \$100,000 with one point, you must pay the bank \$1,000. For the bank, this can be counted as pure profit. This is an incentive for bankers to make risky loans.

From the outside, nominee loans and reciprocal loans look legitimate: the bank is loaning money, just as banks are supposed to do. But in reality, the bank owners are simply misappropriating the bank’s assets for their own use. The opportunity structure for this type of insider banking fraud differs from the opportunity structure for health care fraud. In health care fraud, the offender seeks to blend his fraudulent transaction in with a large number of legitimate ones. The victim—that is, an insurer—is fooled by the seemingly normal transaction. In insider banking fraud, the offender seeks to hide the transaction from outside scrutiny. The outside scrutiny should come from regulators and bank examiners who audit the bank’s books. If outside audits are rare or not very thorough, then fraudulent bankers can in effect steal money from depositors. Furthermore, because banks are federally insured, they can do so with a clear conscience that no individuals will

be hurt. In the S & L crisis, all of these factors contributed to fraud on a massive scale.

Consumer Fraud

Consumer fraud is an old-fashioned crime, one that has been around a long time and comes in a bewildering variety of styles and forms. As a general rule of thumb, anything that can be sold or marketed legitimately can be sold or marketed fraudulently, though it is easier to cheat consumers with some products and services than others. Unlike health care and banking fraud, consumer fraud is not limited to a particular industry and hence has a much broader array of opportunity structures. Here is a partial but illustrative list of some generic types of consumer fraud.

Mislabeled Products and Misleading Advertising

Many consumer products come with labels that purport to tell us about the ingredients in a product or about its performance or efficiency (e.g., prepared foods, computers, water heaters, furnaces, and a host of other products). The information provided on labels influences people's buying decisions. One way to sell cheap or shoddy products is to put inaccurate or misleading information on the label and to make them seem better or more attractive than they really are. Misleading advertising is another way to influence buying decisions. For example, food manufacturers may make questionable claims about the nutritional or health value of their products. For example, in 1994, the Federal Trade Commission ruled that Stouffer's had made deceptive claims about "low sodium" in its line of Lean Cuisine.

Real Estate Fraud

Real estate fraud is like mislabeling consumer products. It involves lying or being deceptive about the condition of real property (i.e., land, houses, and buildings). For example, a salesperson may tell a prospective buyer that a piece of land is developed or that all the necessary permits have been obtained to develop the land in a certain area (developed land

has roads, sewers, water lines, and electric lines). However, in reality, the land is little more than desert, and local authorities have no intention of permitting it to be developed.

Free Prize Scams

Free prize scams are a popular way of separating the unsuspecting from their money. In this scam, people are told that they have won a valuable free prize, but in order to collect it, they must send in money or make a phone call. The money that is sent in will greatly exceed the value of the prize or the victim will be charged for the phone call at a rate that greatly exceeds the value of the prize.

Bait and Switch Advertising

This fraud is particularly popular with “legitimate” retail businesses. It involves advertising some well-known product, such as a TV or major appliance, at a ridiculously low price. However, when consumers come to the store, they are told that the item is sold out or temporarily out of stock and then steered toward other more expensive products that are available.

Repair Frauds

Anything that can be fixed can be used in a repair fraud. Typically, however, repair frauds involve big items such as homes, automobiles, or major appliances (dishwashers, washing-machines, furnaces and the like). The fraud involves either doing unnecessary repairs or doing substandard work and then charging the victim full price.

Charity and Advocacy Frauds

Charity frauds appeal to our emotions. In these frauds, we think we are donating money or goods to help a worthy cause, when in reality the money is misappropriated by those who collected it. Advocacy frauds are slightly different in that, in these frauds, someone promises to advocate for you with some governmental body. They promise to

see, for example, that your interests are protected on Capitol Hill or in your state capital. But in reality, like charity frauds, little or none of the money actually is used toward these ends. Rather, it finances the lifestyles of the so-called advocates.

Advance Fee Swindles

Any time you are asked to pay in advance for a service or product, you are vulnerable to an advance fee swindle. Typically, in these swindles, someone promises to do something for you, but they ask you to pay first and then never deliver on their promises. Often, the promised service entails something that may be difficult to confirm one way or the other as to whether the service was provided. For example, advance fee swindles may involve such services as finding housing, or educational loans, or employment. In these cases, the swindler promises to help you find an apartment, or a college loan, or a new job in return for a fee. You pay the fee but don't get what you wanted. The swindler claims to be working for you but really is just taking your money.

All of these frauds involve the use of false or misleading statements, and this feature is characteristic of frauds. In addition, all frauds involve a transaction (i.e., an exchange between the victim and the offender). Typically, the victim gives the offender some money, and the offender is supposed to give the victim something in return or to do something for the victim. But what the victim gets in return is not what he or she expected or what was promised by the offender.

Consumer fraud is the classic crime of deception. It is an inherently interactional crime requiring both a deceiver and a deceived. Successful consumer frauds involve three elements: contact, legitimization, and co-optation. These elements shape the opportunity structure for consumer fraud, as well as its size and profitability.

First, the offender must somehow *contact* or communicate a message or information to the potential victim. How the offender contacts the victim influences the number of potential victims that can be contacted. Technological changes in the area of communication create new ways for con artists and others intent on fraud to contact potential victims. Before the invention of the newspaper, con artists usually had to meet with their intended victims in person in order to take their money, but

the newspaper created a whole new way to cheat gullible people. With the invention and spread of the newspaper, dishonest merchants and con artists could place misleading or deceptive ads in newspaper and reach thousands if not millions of potential victims. Radio and television made it even easier to contact potential victims through misleading advertising. The telephone makes it possible for fraud offenders to speak directly to potential victims who may be located hundreds or thousands of miles away. The newspaper, telephone, radio, television, mass mailings, and now the internet, at the time they were invented, represented changes in the way that communication between people could take place and the way that information could be disseminated. In addition to permitting fraud offenders to reach more people, advances in communication technology also permit offenders to be physically separated from their victims. Keeping their distance makes it safer for the offender and it makes it harder for victims to find the offender once they discover that they have been cheated.

The means by which offenders make contact with potential victims can vary in the degree to which they are focused or unfocused. In a focused attack, offenders attempt to approach or make contact with individuals of whom they have some prior knowledge or information. For example, telemarketers often buy lists of names, sometimes called a *mooch* list, from companies that make a business of gathering information on people. Along with a person's name, the list may have other valuable information such as telephone numbers, occupations, and household incomes. The lists can come from different sources. For example, people who fill out information cards to enter into drawings for prizes may find themselves on a mooch list, as can people who fill out forms for free gifts on the internet (Ruffenach, 2004). Armed with a name and some information about a potential victim, the telemarketer has some idea how to approach the person and target his or her sales pitch.

On the other hand, some fraudsters use a completely unfocused approach. For example, the well-known and justly infamous Nigerian e-mail scams work in this manner. The scam is nothing more than a electronic variation of an old-fashioned scheme known as the *pigeon drop*. In the pigeon drop, the offender approaches the victim claiming to have found some money but to be unable for some reason to get access to it. The offender claims to be willing to share it with the victim

provided the victim can just do a few things to show good faith, such as perhaps opening a bank account. Typically, good faith is demonstrated by giving the offender some money to hold for safekeeping until the found money becomes available. The Nigerian version starts with mass e-mails that go to millions of e-mail accounts. The e-mail message contains a completely fraudulent story about vast sums of money that are available for the taking. An e-mail received in February, 2008 by one of the authors is reprinted verbatim below.

From: MISS ELODI WILLIAMS ADDRESS: 03 BP 25687 ABIDJAN
03 AVENUE 23 RUE 33 BARREE COCODY ABIDJAN, IVORY
COAST WEST AFRICA.

Hello dearest one,

It is my pleasure to write you after much consideration since I can not be able to see you face to face at first. Being the first and the only child of my father, late Mr Mokun Williams from Freetown in Republic of Serielone a country in West Africa I am 18 years of age. My father was Diamond and gold merchant in Freetown before his untimely death after his business trip to Europe, to negotiate on a business. A week after he came back from Europe, he was shot with my mother by unknown assassins.

Which my mother died, instantly, but my father died after five days in hospital, on that faithful afternoon. I didn't know that my father was going to leave me after I had lost my mother. But before he gave up the ghost, it was as if he knew he was going to die. He my father, (may his soul rest in perfect peace) he disclose to me that he deposited the sum of \$5.7 million U.S dollars in a Bank in Abidjan the capital of Ivory Coast. That the money was meant for establishing a branch of his business in Abidjan - Ivory Coast. Though, according to my father he deposited the money in his own name and mentioned me in the documents as the next of kin. Before his death he advised and instructed me to seek for a trust worthy person abroad who will help me invest and manage this money for me until i am capable to handle it.

Now I have succeeded in locating the bank in Abidjan and also confirmed the fund is in there, most honest and confidentiality. Now I am soliciting

for your assistance to help me transfer out this money out from the bank to your account abroad so that you can be able to manage and invest it in any lucrative business in your country and also help me to move out from here so that I can continue my education which stopped since my parents death. I am Waiting anxiously to hear from you so that we can discuss how you can assist me on this as my guradian since it is the only condition that the bank said this my inheritance can be release to me at this my present age or i can wait until i am up to 25 years and above.

Thanks for your kind attention and i will appreciate to receive your reply to know if you will be able to handle and manage this my inheritance for me as my guradian. Please i am on my kneels begging you to accept standing as my guradian so that this my inheritance be transfer out from here.

Best regards Miss Elodi Williams.

This story surely strikes you as well as 99.99% of those who received it as completely ludicrous. However, because the message reaches so many people, a response rate of even less than one-tenth of a percent may still generate hundreds or even thousands of potential victims. According to insiders, 70% of those who reply to the message eventually end up sending some money to the scammer (Rosoff, Pontell, and Tillman, 2006:537).

We call the second element in consumer fraud *legitimization*. The offender must convince the victim that the transaction and the offender are legitimate. That is, the offender must make the potential victim think that he or she is involved in some sort of legitimate business transaction that will be in the victim's interest. There are any number of ways of doing this. They all involve the offender presenting the trappings of legitimacy to the victim. For example, fake brochures may be printed on glossy paper with pictures and graphs and with impressive well-worded texts (Ruffenach, 2004).

Third, the offender must somehow co-opt the victim (i.e., secure the cooperation of the victim). The victim must willingly decide to participate in the transaction. Getting victims to participate willingly can be accomplished in a variety of different ways, such as by taking advantage of the victim's stupidity or lack of expertise or by appealing

to the victim's greed or gullibility. Many frauds work by promising the victim what appears to be a great deal, such as a really expensive home repair at a price that is much lower than average.

The opportunity structure for consumer fraud is intimately linked with technology and social change. Technological advances create new opportunities for fraud by creating new products and services. For example, foreclosure rescue scams are a new version of an old scam—the advance fee swindle. It has arisen because of a rapid increase in home foreclosures following the mortgage crisis. The scam works as follows. A homeowner who has a mortgage gets in financial trouble, can't make his mortgage payments, and is at risk of losing his home through foreclosure. A scam artist contacts the homeowner. For a fee, the con man offers to act as an intermediary between the homeowner and his lender to keep him from losing his home. In reality, the con man simply takes the homeowner's money and does nothing. In an even more vicious version of this scam, the con man will convince the homeowner to turn the title over to him, with a promise to rent the home back to the owner for a few months and then sell it back to the owner later. Needless to say, this is not what happens. Instead, the scammer simply sells the house and absconds with the profits (Christie, 2007).

Securities Offenses

Background

The securities industry is an extremely important part of the economy and a major arena for white-collar crime. Let's start by getting clear on what securities are and how they work. Technically, a security is evidence of ownership, creditorship, or debt (Shapiro, 1984). To put it more simply, a security is a piece of paper, or an account number, or something that indicates that you have a financial interest or stake in some sort of economic undertaking. For example, stocks, bonds, shares in a mutual fund, promissory notes, U.S. Government savings bonds are all securities. In a sense, securities are symbolic commodities.

People invest in securities to make money or to avoid losing money. For example, you can buy shares in a mutual fund and make money through dividends or increases in the share price for your fund. Or you could buy stock in an individual company and make (or lose) money the

same way. When people buy securities, they are in effect making a bet or taking a gamble that the security will pay off for them. They hope that the stock will go up in value. Publicly traded securities are bought and sold on exchanges, such as the New York Stock Exchange. For our purposes, it is important to note that most of the stock in publicly held companies is owned by people who do not work in the company. Because they are outsiders, most stock owners have to trust what the company tells them when they make their buying and selling decisions. Trust is an intrinsic and unavoidable part of the system. And it is the requirement of trust that creates opportunities for white-collar crime in the securities industry, because people make their investment decisions based on what they think is trustworthy information about securities.

There are five major types of security offenses (Shapiro, 1984). They all involve taking advantage of people's trust in one way or another.

Misrepresentations involve lying about the value or condition of a security. For example, suppose I told you that I owned land out west on which oil and gas had been discovered and invited you to get in on the ground floor of a great opportunity by buying stock in my company. However, in reality, the land that I owned hadn't even been surveyed and I had no way of knowing whether there really was gas and oil out there. That would be misrepresentation.

Stock manipulation involves artificially manipulating the price of a security. This can be a complex offense, but basically it involves trying to create the impression that a stock is about to increase rapidly in value. If you can create that impression, then people are likely to rush to buy the stock and hence drive up the price. If you bought when the stock was low and then sold after its price had gone up, you could make a great deal of money very quickly.

Misappropriation is old-fashioned stealing. Many people don't actually buy securities themselves. Instead, they use an intermediary, a stockbroker, to make purchases for them. Typically, then, this offense is committed by brokers or other financial advisors who simply take the money that their clients have given them to invest and instead steal or appropriate it for their own use.

Insider trading is perhaps the most publicized security offense. It arises when people trade on the basis of non-public information that is relevant to the price of a stock. There is nothing wrong with insiders

who work for a company buying its stock. But it is illegal for insiders to buy or sell stock on the basis of information that is not available to the public. For example, if you worked for a drug company and you learned that the company had just succeeded in developing a drug to cure diabetes, it would be illegal for you to then rush out and buy a lot of stock in your own company before that information was made available to the public in general.

Investment schemes involve deliberate attempts to trick people into investing so that you can steal their money. Ponzi or pyramid schemes are the classic example here. These schemes involve recruiting investors with promises of extraordinarily high returns on investments. For example, I tell you that I have a great investment opportunity and you can get in on it for only \$10,000. I promise to double your money in just 6 months. You invest, and soon thereafter I start sending you dividend checks. You think the investment looks great and proceed to tell your friends and relatives about this great opportunity, encouraging them to take advantage of it as well. As more people invest, I am able to continue to send you dividends from the money I get from new investors. I'm also able to keep some extra for myself. But no new money is being generated from the so-called great investment opportunity. Rather, I am robbing Peter to pay Paul. Eventually, as more and more investors join, the number of members outnumbers the number of new investors, and there's not enough new money to pay everyone. The charade collapses—and everybody who invested loses money, except perhaps for the ones who got in early.

Opportunity and Securities Fraud

Some types of securities offenses have opportunity structures that are quite similar to consumer frauds. Misrepresentations and investment schemes, for example, rely on the deception of individuals. They are in a sense like mislabeled products or misleading advertising. The offender presents misleading information about a security, and the victim falls for it. Whether the offense succeeds or not depends on who is contacted and how skillful the offender is in presenting a distorted picture of reality.

Other types of securities offenses have different structures. Insider trading, for example, does not require the offender to deceive an

individual in order to take advantage of them. Rather, the offender is attempting to hide or disguise a prohibited transaction. Whether the offense succeeds depends on how well the offender can hide his involvement in transactions that are illegal but that benefit him. The offender must hide his involvement from outside observers, such as the SEC. The evolution of insider trading and the legal prohibitions against it provides an excellent illustration of how opportunity structures evolve and how offenders adapt to changes in their environment.

Antitrust Offenses

Antitrust offenses are sometimes called *offenses of the marketplace*. They depend on the market in the sense that they are impossible to commit without a free market or something close to it being present. Hence, to begin our discussion of antitrust offenses, we first have to say a few things about this so-called free market. What exactly is a free market? Technically, a free market is one in which the prices of goods and services are arranged completely by the mutual non-coerced consent of sellers and buyers, determined generally by the law of supply and demand with no government interference in the regulation of costs, supply, and demand (Downes and Goodman, 2006). Free market economies can be contrasted with controlled economies, in which prices are set by a central authority. Soviet-style communism was an example of a controlled economy.

Although we call ourselves a free-market society, there is no such thing as a totally free market. As you have already seen in previous sections, there are all sorts of laws and regulations governing what and how things are produced, marketed, and sold. But relatively speaking, ours is a free-market economy, and that is one reason why we have antitrust laws and why we outlaw certain practices in the market place. We outlaw certain activities because we think that they hurt the market.

In theory, the free market is the most efficient form of economic organization. Businesses produce based on what they think the market (i.e., buyers) want, and buyers have the freedom to spend their money as they see fit. Businesses compete with one another for the attention of buyers. If a business firm meets the needs of buyers, they will buy its products or services, and it will make money. The firm's competitors will

have to match or better its performance if they want to stay in business. Everybody is supposed to benefit from this arrangement, but it often doesn't seem to work out that way.

Antitrust violations can be divided into two broad groups: restrictive trade agreements and monopolies or monopolistic practices.

Restrictive trade agreements are often called *restraints of trade*. A restrictive trade agreement is just that: some form of illegal agreement between producers or sellers in an industry to restrict how the industry works. Recall that in a free market, prices are supposed to be determined by the mutual consent of *sellers and buyers*. Sellers are not supposed to get together to determine prices. There are three basic forms of restrictive trade agreements: price fixing, bid rigging, and market division or allocation schemes. Price fixing refers to agreements between competitors to set or in some way manipulate prices so that they are held at a certain level. For example, if milk producers get together and agree among themselves to charge schools a set price for the milk used at lunch (as they were convicted of doing not too long ago), that is price fixing. Bid rigging occurs when competitors agree in advance who will submit the lowest bid as part of a competitive bid process for a contract. The purchasers in bid rigging cases often are federal, state, or local governments. Finally, market allocation occurs when competitors get together and divvy up an area so that only one of them operates in any one area at a time. For example, two paving contractors might divide up a town so that one takes the east side and the other the west side of town. These sorts of agreements are illegal because they restrain trade. The prices for goods and services are not being set by open competition in the market place but rather by collusion between competitors.

Monopolies and monopolistic practices involve unfair attempts to corner a market or to drive out competitors from a market place. A monopoly is said to exist if one company controls an entire market, but a company can have monopolistic control even though it has competitors if it controls a large enough share of a market. Microsoft's Windows, for example, was recently declared to be a monopoly even though there are other operating systems available. The other systems have such a small market share and Windows has such a large share that it effectively controls the market. Not all monopolies are illegal. Indeed, some monopolies are explicitly created and sanctioned by the government, such as power

and water utilities. We permit monopolies in these industries because it seems to make sense. You wouldn't want ten different water companies digging trenches and putting in water mains in your neighborhood.

All restrictive trade agreements involve collusion between competitors in an industry, and they are more likely to arise under certain conditions. To be successful in their collusion, competitors must communicate, ensure compliance, and maintain secrecy. They must share information regarding how prices are to be set, markets divided, or bids rigged. The participants to the conspiracy also must have some method of ensuring that everyone complies with the terms of the agreement. Finally, they have to somehow hide their activities from purchasers and the government. Because of these requirements, restrictive trade agreements are more likely to arise in industries where there few rather than many competitors. It is easier to share information, ensure compliance, and maintain secrecy among a small number of participants than it is among a large number.

Collusion is also more likely with some types of products than with others. For example, the probability of collusion increases if the product or service in question is standardized and if other products cannot be easily substituted for it. The more standardized the product is, the easier it is for competing firms to reach an agreement on prices. If other products cannot be easily substituted for the product in question, then the sellers do not have to worry that purchasers will simply buy something else if the price gets too high. Consider, for example, the natural gas industry and the retail pizza industry. Natural gas is natural gas. There is not much to differentiate between one kilogram of gas and another. Pizza, on the other hand, comes in an extraordinarily large number of permutations. It would be very difficult to agree upon a standard price, and even if the owners of pizza joints in a town could agree on a common price pattern, there would be limits on how high the price could be set. If it gets too unreasonable, consumers can simply switch to frozen pizza or another food entirely. For homeowners, however, switching from natural gas to some other form of energy is certainly a much more difficult undertaking than switching from pizza to spaghetti.

Finally, the nature of the relationships between competitors in an industry influences the likelihood of collusion. If competitors know one

another well through social connections, trade associations, business contacts, or the movement of employees from one company to another, collusion becomes easier. For example, if a governmental agency makes repetitive purchases of a particular product or service, then over time vendors may come to know one another and decide to share the work for future contracts.

Summary

In this chapter, we have applied our opportunity perspective to a small selection of white-collar crimes. There are many other types that could have been chosen, and even among those that we did explore, there are subtypes and variants that we did not address. The typological approach that we used here, however, should not be overemphasized. Although each of the various crimes that we have discussed is based on a specific opportunity structure, there are, nevertheless, general themes that pertain to all of them. In this concluding section, we identify and explore these themes and touch briefly on their implications for the problem of controlling white-collar crime.

As Marcus Felson (2002:99) has correctly pointed out, all predatory offenders have to solve the basic problem of gaining access to their intended crime target or victim. White-collar offenders have an advantage over street criminals in this regard, because by virtue of their occupational position, they have legitimate access to their target or victim (Felson, 2002). In none of the offenses examined here did the offenders have to break down a door or jimmy a lock or hide in the bushes and grab passers-by. Rather, their access to the crime target was perfectly legal and normal.

The offender's specialized access to the crime target has profound implications for the problem of preventing these offenses. One of the major strategies used to prevent other forms of crime is to block the offender's access to the target. The whole point of locks, fences, and walls is to keep people with bad intentions away from you or something you value. For white-collar offenses, however, this strategy often is not feasible for obvious reasons.⁷ At least, it is not feasible in the form of physically blocking offenders away from getting to a physical target. As we discuss in later chapters, there are ways to reconfigure the strategy of

blocking access as applied to white-collar crime. Hence, the problem of controlling white-collar crime is enormously complicated.

All of the crimes that we have discussed in this chapter depend on the offender's conveying for some period of time a superficial appearance of legitimacy. The offenses involve behaviors or activities that look normal or routine when viewed from the outside. They somehow mimic or are based in normal economic activities. For example, in consumer fraud, a seller offers something for sale, and a consumer decides to buy it. That's normal. Illegality comes in when the buyer's decision is based on information provided by the seller that is deliberately misleading, if not patently false. In many health care frauds, a health care provider submits a claim to a health care insurer. There is nothing unusual about that. Illegality arises when the claim does not reflect what actually happened in the field. In price fixing, a product or service is offered for sale, which is perfectly normal. It becomes a crime when the price of the product has been set by collusion among sellers rather than by free and open competition. Thus, white-collar crime depends on and is intimately linked to legitimate economic activities.

Like specialized access, the superficial appearance of legitimacy has implications for crime prevention and control. Besides blocking access, another major prevention strategy is surveillance. Security cameras, private guards, and neighborhood watches are all based on the idea that offenders will refrain from committing crimes if they think they are under surveillance. In the case of white-collar crimes, however, surveillance is problematic. The problem is that what the offender is doing physically is not obviously illegal or perhaps even suspicious-looking. Thus, although surveillance can play an important role in white-collar crime prevention, it involves more than simply looking for something that is obviously out of place or suspicious. It requires piercing the appearance of legitimacy.

In Chapter 1, we defined deception as the "advantageous distortion of reality," with the advantage devolving to the offender. All of the offenses examined here somehow involve an advantageous distortion of reality, but the nature of the distortion and the way in which it is advantageous to the offender differs among crimes. There are two broad types of deception. They involve, respectively, the presentation of misleading information and the concealment of information.

First, in many of the white-collar offenses examined here, the offenders in some way present misleading or false information about some aspect of a product or service. On the basis of that information, victims make decisions to relinquish control over economic resources to the benefit of offenders. The term victims needs to be construed broadly to include individuals, other organizations, and governmental programs. For example, in many consumer frauds, the victim is an individual who buys something from a seller based on bad information. Although they may seem different, many health care frauds work the same way, but here the victim is a health care insurer that pays for (in effect, buys) a service from a health care provider based on bad information.

Second, offenders can hide their activities and benefit by gaining control over economic resources that arise through the natural operation of the marketplace. For example, in price-fixing cases, offenders collude to set the price of some product or service above what it would be if the price were determined by competition. After the artificial price is set, the offenders benefit through the normal decisions of purchasers to buy products or services. Similarly, in stock manipulations, the offenders engage in clandestine actions that create a misleading image of the value of a stock or other type of security. They benefit if other players in the market behave normally in terms of their buying decisions.

Both kinds of deception—presenting misleading information and hiding information—have implications for the problem of control, which we briefly identify here and discuss more fully in future chapters. White-collar crimes based on the presentation of misleading information can be reduced if those who receive the information become better able to see through the misleading image that offenders try to create. To reduce offenses based on hiding information, we must become better at recognizing patterns of activities or at making the hiding of information riskier.

OPPORTUNITY AND CORPORATE VIOLENCE

Introduction

In the previous chapter, we examined crimes that impose financial or pecuniary costs on their victims, be they individuals, government agencies, or other businesses. In this chapter, we apply the opportunity perspective to environmental and workplace safety crimes. These offenses are potentially much more serious. They may impose real physical costs on individuals. This is not to say that the perpetrators deliberately set out to harm other people. They do not. The physical harms that they cause are unintended in the sense that they are not what the offender is trying to achieve. The motivation for the offense is not to impose harm on others but rather to gain a financial advantage. Physical harm, however, is always a potential side effect. Thus, we examine what has been called the “quiet violence” of corporations (Frank, 1985).

In addition to the nature of the harm that they impose, the offenses discussed in this chapter differ from those examined earlier in another way as well. Their legal status as crimes is more ambiguous. In the previous chapter, we applied the opportunity perspectives to offenses that involve some kind of fraud. Recognition of the harmfulness of fraud and of the need to proscribe fraudulent behavior has deep roots in legal history, going back to biblical times and probably farther (Podgor, 1999). Though many of the specific offenses that we discussed, such as fraudulent billing in the health care industry, are new in the sense

that they have come into being only relatively recently, their underlying illegality, nevertheless, is based on ancient legal principles. In this chapter, we deal with offenses that do not have such long historical pedigrees. These are modern offenses in the sense that they developed out of the industrialization and modernization of production in the past few centuries. Their legal status as crimes is still evolving. Many environmental and workplace-related offenses are illegal in the sense that they violate various regulations, but they are not necessarily criminal. Indeed, an important part of the opportunity structures for these sorts of offenses is their status as regulatory as opposed to criminal violations.

Environmental Crime

In an influential book, *The Closing Circle: Nature, Men, and Technology*, environmental activist Barry Commoner linked rising levels of industrial pollution to the development of new technologies (Commoner, 1971). He observed that though new technological developments typically increase profits for business, they frequently are accompanied by detrimental environmental side effects. Extra profit for business was often at the expense of environmental degradation, and the costs of this degradation was borne by society as a whole and not the business *per se*. Commoner's work gave rise to a form of environmentalism that has affected *what* is defined as environmental crime and *how* to "fight" the crime problem.

During the 1970s, Americans started to become increasingly sensitive to the high costs of pollution and to demand action against it. The case against the agricultural pesticide DDT for its harmful effects on wildlife and human health (documented in *Silent Spring* (Carson, 1962)); the unforgettable sight of the Cuyahoga River, a tributary of Lake Erie, catching fire in 1969 as a result of petrochemical dumping by Cleveland and other Ohio cities; and the headlines garnered by 20 million Americans celebrating Earth Day in 1970 led the federal government (with President Nixon leading the charge) to mandate the creation of a centralized regulatory agency for environmental affairs, the U.S. Environmental Protection Agency (EPA). This federal agency was given control over the enforcement of federal environmental statutes. The

EPA was designed to assist and cooperate with state-level enforcement or, if pollution laws were not sufficiently enforced, to supercede state authority with federal enforcement efforts. Under this collaborative model, the states handle the bulk of environmental enforcement today. In 1997, for instance, while the federal EPA initiated 4,129 actions, state environmental agencies initiated 10,515 administrative actions and referred 379 cases to state courts (Scalia, 1999).

The primary responsibility of the EPA is to clean up existing pollution problems and protect the environment and human health by enforcing environmental laws enacted by Congress. The EPA has both criminal and civil enforcement power, which means that violators may be prosecuted and jailed for environmental crimes or brought into statutory compliance through civil/administrative enforcement of regulations. Criminal enforcement is rare, especially for corporations. For instance, between 1994 and 1997, a total of 1,846 defendants were charged with a criminal environmental offense. Yet, only 314 (17%) of those criminally charged were *organizational* defendants, most of which were charged with an environmental protection violation (Scalia, 1999). Criminal prosecution is typically reserved for the most egregious violations in which laws are knowingly and intentionally broken. In these kinds of cases, the goals of punishment are both special and general deterrence.

Compliance is the main goal of civil and administrative enforcement under the assumption that highly punitive sanctions are unnecessary (or because, as we discuss later, criminal legal standards are too difficult to meet). It is a much more common form of regulatory intervention. For example, of the 4,129 federal environmental enforcement actions initiated in 1997, 88% (3,634) were administrative or civil in nature (Scalia, 1999).

These statistics demonstrate that criminal intervention is relatively rare in the enforcement mix when violations are discovered. Yet, because we know so little about the hidden figure of environmental crime, it is difficult to estimate whether environmental enforcement effectively deters companies. The EPA is responsible for enforcing the law, which is continually expanding as new responsibilities and regulatory programs are added to the old (Portner, 2000). It is important to understand how EPA carries out this responsibility because criminal opportunities are tied to enforcement practices.

Individuals as well as organizations (which include not only businesses but nonprofits and government agencies) can break environmental laws. Yet, until recently, most concern about environmental pollution has concentrated on organizational and industrial sources of pollution. Therefore, our discussion of environmental crime and the opportunity framework focuses on companies and the managers within them.

Recall that white-collar crime has three main properties: (1) specialized access, (2) spatial separation, and (3) superficial appearance of legitimacy. All of these characteristics are illustrated in the tragic 1980s case of the W. R. Grace Corporation and a small working-class town in Massachusetts.

The case against the W.R. Grace Corporation began in the mid-1970s when the residents of Woburn, Massachusetts, started to realize that an abnormally large number of local children had contracted leukemia (Brown and Mikkelsen, 1990). For decades, the townspeople had noticed that a local lake, Lake Mishawum, often had a foul smell and an odd reddish color. They worried about the possibility of contaminated water because of the number of chemical and manufacturing plants in the area that produced toxic wastes. In 1978, two local wells were tested and had to be closed because of dangerously high levels of carbon-chloroform extract (CCE). At first, the problem was attributed to the method the town used to chlorinate water.

The problem with the water in Woburn, however, was much worse than an odd color and bad smell. The parents of the children with diagnosed leukemia eventually formed a committee to press for more testing. In 1979, the EPA tested the wetlands surrounding the two wells that had been closed and found elevated levels of arsenic, chromium, and lead—all known carcinogens. With help from researchers at the Harvard School of Public Health, the citizens group was able to document a statistically improbable cluster of leukemia cases in the Woburn area.

Eight families eventually filed a \$100 million class action law suit against W. R. Grace. Of course, the company denied any wrongdoing. However, at the trial, it came out that the company's Cryovac Division had dumped toxic wastes on its property. The waste products eventually had filtered into the groundwater and from there into the homes and bodies of the people of Woburn. After a few years of legal maneuvering,

W. R. Grace eventually settled with the families. In 1988, it was indicted and pled guilty in the U.S. District Court of the crime of providing false statements to the EPA about its toxic waste disposal practices.

Unfortunately, what happened in Woburn, Massachusetts is not an isolated case. There are literally hundreds if not thousands of similar scenarios involving other companies and other communities (for many examples, see pp. 149–210 in Rosoff, Pontell, and Tillman, 2006). In these cases, a legitimate business produces some type of toxic waste that it is supposed to handle and dispose of in a particular manner. However, instead of doing that, the company disposes of the waste illegally in some other way. There are a number of different ways. Like W. R. Grace, a company may simply dump the toxic waste on its own property. Alternatively, the company can truck the waste somewhere else and dump it, or more likely, hire someone else to do the same thing. Another strategy is to mix the toxic waste with other non-toxic waste and dispose of all of it as non-toxic waste, which is much less stringently regulated and so much less costly to handle (Rebovich, 1992).

These cases display all of the characteristic features of white-collar crime. The company has a legitimate right to use whatever chemicals or materials are involved and is, in effect, on its honor to dispose of them properly. Thus, it has specialized access. Those who will eventually be harmed may be miles away from where the offense, the illegally dumping, occurs. Finally, because there often are no obvious signs that something bad has happened, the company appears to be doing nothing wrong, at least as viewed from the outside. Indeed, in the Woburn case, the families had to spend an extraordinary amount of time and effort gathering evidence to show that something illegal had happened. First, they had to demonstrate that there was a statistically improbable cluster of leukemia cases in Woburn. Then, they had to prove that toxic waste from the Cryovac plant could filter into the ground water and eventually into the drinking water of residents. Finally, they had to show that employees and managers at Cryovac did indeed improperly dispose of toxic waste. Although, all of these facts were proved, it was a complicated and difficult process to do so (Brown and Mikkelsen, 1990).

The opportunity structure of illegal hazardous waste disposal has two key features. First, companies are trusted to be responsible for disposing

of waste in a legal manner. Hence, they are in control regarding whether they do so or do not. Second, if they choose to dispose of toxic waste illegally, the effects of their illegal actions are not immediately obvious and indeed are often delayed for considerable periods of time.

Companies such as W. R. Grace are able to engage in illegal disposal practices, primarily because of a lack of credible oversight (Shover and Hochstetler, 2006). As we noted at the start of this section, the enforcement system is an integral part of the opportunity structure for environmental crime. There are literally hundreds of thousands of business enterprises that produce some form of hazardous waste as a byproduct of their normal operations. They range in size from behemoth corporations like the W. R. Grace Corporation to tiny mom-and-pop dry cleaning establishments. All of these enterprises are supposed to handle and dispose of their waste as specified by law and regulations. And herein lies the problem. It is impossible to watch all of these organizations to make sure that they actually do follow the law in disposing of their hazardous waste. The opportunity for environmental crime arises because it is difficult and costly to monitor whether companies are or are not complying with the law. Hence, the risk of the offense being exposed is low. Unfortunately, we do not really know how low the risk may be.

Environmental offenses may be exposed in a variety of different ways, including self-reports, inspections, whistle-blowing, and accidental discovery. Companies are required to keep track of how they handle hazardous waste and to self-report any instances of noncompliance. Although W. R. Grace certainly did not disclose its offense, some companies do make such reports, perhaps because they fear the negative publicity that would result if the offense were to come to light via other means. The ratio of reported to non-reported instances of noncompliance, however, is not known. Offenses can also be discovered by the EPA inspectors. Unfortunately, though, inspections are relatively rare because the number of waste-producing enterprises vastly outnumbers the number of inspectors. Two other mechanisms of exposure are accidental discovery by the general public and whistle blowing by knowledgeable employees.

Whistle blowing is a potentially important source of exposure and hence risk for companies that violate environmental regulations. When a

company *knowingly* engages in environmental crime, efforts are made, of course, to conceal the activity. Yet, within the company, multiple parties may be privy to the knowledge that a crime has occurred. From the point of view of company managers, all of these individuals are potential sources of risk because they could expose the offense. Because businesses vary greatly in size and structure, who and how many within a company may know about illegal activity also varies. Larger companies, compared to smaller ones, are more likely to be divided into specialized areas that make it easier to hide illegality from managers and employees in other areas. Smaller firms, on the other hand, are more likely to have a “flat” management structure (Barlow, 1993; Makkai and Braithwaite, 1994). Such a structure increases the likelihood that top managers will have actual knowledge of an illegal activity when it occurs. Legally, however, top managers are held liable for illegal activities that they *should* have known about but did not (Cohen, 1998).

Finally, it is important to recognize that in the case of environmental crimes, the potential offenders—businesses—have a great deal of influence over the nature of the oversight that is imposed on them. The system of enforcement that we have now came about as a result of a negotiated political process. The business community resisted the establishment of the EPA, and when that failed, they have continually attempted to restrict its size and legal mandate (Burns and Lynch, 2004:71). Indeed, in the 1980s, during the Reagan administration, efforts were made to deregulate the environment and to reduce the EPA’s budget (Burns and Lynch, 2004). To a degree, then, businesses can shape the opportunity structures for their offenses through their influence over the enforcement process. Large, well-established companies generally have more economic and political power than those that are smaller and newer. This translates into influential Congressional and corporate friends, community leaders, and other stakeholders who make it more difficult for regulators to investigate and pursue offenders even if violations somehow come to light (Shover and Hochstetler, 2006).

All of these mechanisms produce a certain number of known instances of environmental crime every year. Yet, because environmental offenses are not obvious, we never know how many offenses go undiscovered. The executives at W. R. Grace may have reasonably assumed that the benefit of their “crime” (saving money that would normally be

spent on environmentally sound disposal of toxic waste) outweighed its costs (low risk of discovery). Yet, it is important to recognize that there are countervailing forces that business must contend with and that can potentially raise the costs of environmental deviance. The victims of environmental crimes are not always just individuals. Other organizations or groups may be harmed. For instance, the Love Canal section of Niagara Falls in New York and the city of Times Beach, Missouri were evacuated and, in the case of Times Beach, purchased by the government and destroyed after toxic chemicals were found in the soil. Illegal use, storage, and disposal of toxic chemicals by companies (Hooker Chemical and Northeastern Pharmaceutical and Chemical Company) were implicated in both cases. The municipality, state, and federal governments got involved, suing the industrial giants for redress on behalf of the victims and for financial assistance to help the federal government clean up the waste sites (Superfund). In these cases, the power relationship between offenders and victims is more balanced and less asymmetric than is often the case between environmental offenders and their victims. For example, an employee of a large petroleum company accused of illegal waste disposal once acknowledged that power asymmetries can vary, when he observed, "I don't think the company is too awfully worried about suits filed by their own employees. They were more worried about the state because it has clout" (Trost, 2008).

Finally, we note that the cost of pollution weighs more heavily on some segments of society than others. Research has suggested, for instance, that minorities and the poor are disproportionately affected by pollution (Checker, 2005). Indeed, some suggest that victimization occurs precisely because these groups have less economic and political power to protect their communities from environmental polluters in the first place and these same groups lack the resources to force environmental cleanup once pollution has occurred (or to move out of areas that have higher pollution levels). The term *environmental injustice* has been coined to describe the unequal distribution of environmental risks and hazards to which members of disadvantaged groups are subjected. We talk more about environmental injustice in Chapter 8.

Workplace Crimes

Many different kinds of crimes occur in the workplace, but only some of these fit with our definition of white-collar offending (Friedrichs, 2002). For instance, an angry spouse can shoot his wife while she is working or one worker may steal another's wallet. These are more traditional kinds of crimes that can occur anywhere. The workplace is merely the setting in which the event transpires. However, some kinds of white-collar offenses arise out of the unique opportunities that are presented by a particular organizational structure or by a particular occupational position. In this section, we focus on work conditions that are hazardous for employee health and safety.

Many, but not all, workplace safety and health violations are regulated by the Occupational Safety and Health Administration (OSHA). Others may fall under more specialized agencies, such as the Mine Safety and Health Administration (Shover, Clelland, and Lynxwiler, 1986) or the Nuclear Regulatory Commission. Like the EPA, the OSHA is a fairly new regulatory agency. The Occupational Safety and Health Act of 1970 established a federal program to protect most workers from job-related deaths, injuries, and illnesses. Established by the then Secretary of Labor, James Hodgson, on April 28, 1971, the task of the new agency was to administer the provisions of the OSH Act (MacLaury, 2008).

Although the OSHA was established less than 40 years ago, the dangers associated with working conditions were recognized long before that. In this country, laws governing the safety of working conditions started to appear during the mid-nineteenth century (Frank, 1993) and served as a rallying point for organized labor in the United States in the 1900s. Sadly, however, despite the laws and OSHA, work-related diseases, injuries, and deaths are estimated to number in the hundreds of thousands (if not higher) annually (Reiman, 1990). Some of these tragic outcomes are accidents or due to negligence on the part of workers; yet, evidence suggests that firms too often fail to properly warn employees about hazardous conditions and neglect to train or equip them to safely negotiate the workplace. One estimate holds that up to one-third of all on-the-job injuries are due to illegal working conditions (Reasons, Ross, and Paterson, 1981). Unfortunately, taking precautions to protect workers is viewed by

some firms as overly burdensome and costly to the company's bottom line (Clinard and Yeager, 1980:69; Szasz, 1984).

When workplace violations do occur, there are regulatory, civil (tort), and criminal enforcement actions that can be brought against offenders (Frank, 1993). However, as is true in the case of environmental enforcement, criminal prosecution of OSHA cases is the legal intervention of last resort (Hawkins, 2002). For example, a careful review of OSHA data by the *New York Times* found that between 1982 and 2002, there were 2,197 cases in which a worker had died because of a willful violation of safety laws by the employer. Only 196 of these cases (approximately 10%) were referred for criminal prosecution. Of these, only half led to convictions, and only 20% of the convictions led to sentences of incarceration. All in all, the likelihood that someone will be imprisoned when a worker dies as a result of a willful safety violation is less than 1 out of 100 (Cullen et al., 2006.).

In many ways, the opportunity structure for workplace offenses is similar to that for environmental crime, but there are some unique characteristics as well. As with most environmental crimes, in the case of workplace crimes, the criminal actors (whether the firm or officers of the company) are engaged in legitimate economic activity. Since a primary goal of owners and managers is to make a profit, they are always looking for ways to reduce the costs of production. Holding everything else constant, if costs can be reduced, then profits go up. For most businesses, the cost of labor has a significant impact on overall profitability. Hence, there is a built-in incentive to cut labor costs whenever possible. One way of doing this is by skimping on safety and in the process endangering workers.

For example, a case exposed by the *New York Times* involving McWane Inc., a privately held company headquartered in Birmingham, Alabama, provides a textbook example of the link between cutting costs and dangerous workplaces (Barstow and Bergman, 2003). McWane Inc. makes pipes, and it has profited enormously using "the McWane way" of running things. The McWane way is to cut labor costs to the bone by reducing the number of workers to the bare minimum, requiring the workers who are left to work extended hours, and avoiding as many safety related costs as possible. These measures have made McWane one of the most profitable pipe manufacturers in America and one of

the most dangerous employers in America. According to the *Times*, between 1995 and 2003, at least 4,600 injuries have been recorded in McWane foundries. Nine workers have been killed, and the company was cited for more than 400 federal health and safety violations. This is far more than all six of their major competitors combined (Barstow and Bergman, 2003).

Let's consider the story of McWane and the Tyler Pipe company in more detail. In 1995, McWane bought Tyler Pipe, a foundry located in Tyler, Texas and, using the McWane way, turned it into a hell hole for the most disadvantaged and vulnerable of workers. After McWane bought the plant, it cut nearly two-thirds of employees while insisting that productivity remain the same. Safety inspectors, pollution control personnel, relief workers, cleaning crews, and maintenance workers were all eliminated. Rather than have three 8-hour shifts, the company instituted two 12-hour shifts and often required employees to work even more hours for 7 days a week. Conditions at the plant in Tyler, Texas, got so bad that the company had to recruit employees from local prisons, and "only the desperate" would seek work at Tyler Pipe (Barstow and Bergman, 2003).

Not all types of work carry the same potential for harm. Generally speaking, employment in unskilled jobs, especially those in manufacturing and production, increases the risk of illegal exposure to hazardous substances or unsafe conditions on the job (although repetitive stress injuries can occur in clerical/secretarial and other forms of service work). Because these jobs are stratified by gender, race, and class, the chances of victimization are not distributed evenly within society nor is the opportunity or means for redress (Szockyj and Fox, 1996)—a point we return to in Chapter 9.

A key property of white-collar offending is the spatial separation of victim and offender. In our environmental crime example, we noted how difficult it can be to trace victimization to its source. In the workplace, there is less separation between offenders and victims than in the case of environmental crime because both work for the same organization. Yet, the top managers who make health and safety decisions are unlikely to work "on the floor" in a plant where exposure risks are greatest. And, in cases where the corporation is separated into divisions, top management may work in a corporate headquarters

located hundreds or thousands of miles away from manufacturing facilities. Moreover, because the risks of working with hazardous and toxic substances may not be apparent for many years and may be confounded by other “risk” factors (e.g., smoking), employees may never know that their ill health is caused by unsafe working conditions (Calhoun and Hiller, 1992). Thus, for this type of white-collar crime, there is a physical and symbolic division of labor between the offender and victim that is akin to the kind of spatial separation that we have discussed earlier.

Our framework suggests that companies who violate OSHA regulations will try to maintain the appearance of legal compliance. They try to do so in a variety of different ways. Some may provide limited, but not sufficient, training or safety equipment to employees, perpetrating the illusion that health and safety provisions for employees have been met and are taken seriously. A firm also may purposively keep knowledge about toxic exposure and its consequences from employees, in some cases referring workers to “company” doctors who dismiss illnesses or fail to “connect the dots” that implicate toxic exposure in the workplace (e.g., liver cancer is caused by alcohol consumption and not by exposure to vinyl chloride). Indeed, corporations have a long history of knowingly exposing their employees to hazardous substances on the job while maintaining the illusion of ignorance (Calhoun and Hiller, 1992).

A famous example in this regard involves the Johns-Manville Corporation and asbestos (Brodeur, 1985). The potential dangers of exposure to asbestos, a mineral highly valued and useful for its resistance to heat, have been recognized since the first century AD. Breathing asbestos-laden dust can lead to asbestosis, a crippling and usually fatal lung disease. The Johns-Manville Corporation produced and marketed asbestos products for decades. Since at least the 1930s, the company had internal medical reports of asbestosis among its workers. Yet, it hid this information about health hazards from its own workers for decades (Brodeur, 1985; Calhoun and Hiller, 1992). By the 1970s, thousands of former Johns-Manville workers were dead or dying as a result of asbestos exposure (Friedrichs, 2007).

The opportunity perspective, thus, can be usefully applied to workplace safety offenses. Next, we see how the techniques of white-

collar crime (deception, abuse of trust, and concealment) are utilized by OSHA violators. To do so, we draw from a well-known corporate crime case involving Occidental Chemical Company. Occidental workers were found to be sterile as a result of handling the pesticide DBCP (Simon and Etizen, 1990), a chemical used to control fruit pests.

DBCP was banned by the EPA in the late 1970s, but the damage had already been done. The company knew DBCP caused testicular atrophy in animals but took no action to warn its employees of potential consequences. A law suit was brought against the three largest producers of the chemical (Dow, Shell, and Occidental) by 57 employees. Twenty-five of these claims were ultimately settled by Occidental for \$425,000 (Gold, 1989).

This case demonstrates how the white-collar offending techniques discussed inform our understanding of unsafe production. From all accounts, like Johns-Manville, Occidental management knew the results from numerous studies by scientists at Shell and Dow Chemical that suggested alarming reproductive consequences associated with DBCP exposure. Occidental deceived its employees, failing to “connect the dots” even after an unusually high level of childlessness was noticed among male workers. The callous disregard for the safety of its employees is obvious in a remark made by one Occidental official in a film made about the case, “The Song of the Canary.” He said, “Heck, we just didn’t draw the conclusion that there’d be sterility from the fact that the testicles were shriveling up.”

Concealment, the last technique to be discussed, is a critical element of unsafe productions. In the Occidental case, management knew of the hazards but concealed the evidence. If the true dangers of the workplace were revealed to employees, it might be hard to attract and keep employees, or firms might need to raise wages necessary to attract willing workers. The cost of cleanup, added safety training and equipment, and the risk of medical bills and potential lawsuits almost guarantee that many, if not most, companies will conceal rather than reveal violations and employee risks.

There are two key features to the opportunity structure for workplace crimes. First, like environmental offenses, they occur incidentally to and as a by-product of legitimate economic activities that are conducted for the most part in private spaces, that is within a private company’s

workplace. Hence, the offense is difficult to observe from the outside. The enforcement of workplace safety laws suffers from the same weakness as environmental enforcement. The OSHA, like the EPA, is not up to the task. There are too many potential offenders and far too few inspectors. Second, the victims are either not aware that they are being exposed to a hazardous substance or workplace condition or they are powerless to do anything about it. Workers may be powerless simply because they have no other employment opportunities and are desperate for work. From the perspective of the company, both of these factors reduce the risk that their illegal and harmful treatment of workers will be exposed.

The twin problems of ignorance and powerlessness often are exacerbated for workers outside of the United States, particularly those in less developed countries. The size and scale of business operations affect economic and political power not just in this country but worldwide. Large and profitable companies from the United States and other capitalist industrialized nations that stoke the economic engines of the developed world have significant environmental and workplace safety consequences in lesser developed countries.

To illustrate this point, we draw from the legal case in Nicaragua against Occidental (shipping DBCP overseas). In 1958, unpublished initial studies of the chemicals' toxicity by Dow Chemical and Shell Oil revealed adverse effects to the endocrine system. Yet, in 1964, the chemical companies received approval for the commercial distribution and sale of Nemagon without modification and without any recommendations for protective clothing or special handling of the chemical.

When the EPA banned Nemagon in the United States, the agency pulled the chemical off the market in the United States, citing its toxic effects on human chromosomes. DBCP does not dissipate easily. Rather, according to EPA reports, the chemical can persist in the air, soil, and water—contaminating multiple generations. Costa Rica also banned Nemagon and, as a consequence, two of the three major banana-producing companies in Central America switched to other, more expensive nematicides. One company, Standard Fruit, continued using Nemagon. Farm workers and others in Nicaragua believe that DBCP is still being used in some pesticides. In addition, seepage from buried tanks of the pesticide into the environment continues to expose

Nicaraguans to extremely hazardous conditions. As one might expect, it is difficult for host-country citizens to seek legal redress for wrongs done to them by multinational corporations. Some legal groundwork has been laid by the Nicaraguan National Assembly that would allow farm workers to sue foreign corporations and, in December 2002, three U.S. corporations (Dole, Dow, and Shell) were found liable under Nicaraguan Law 364. The companies were ordered to pay \$490 million in a class action law suit filed by 583 farm laborers who were exposed to the chemical while picking bananas (International Committee in Solidarity with the Victims of Nemagon, 2008). As is typical in these kinds of cases, U.S. companies have denied the legality of the case on technical grounds and have asked for a new trial in the United States.

Summary

In this chapter, we have explored two forms of corporate violence. Like the property crimes that we examined in the previous chapter, environmental and workplace safety crimes have their own opportunity structures that are based on the characteristics that we have identified as important for white-collar crime. These characteristics include specialized access, spatial separation, and superficial appearance of legitimacy. In addition, like all white-collar crimes, these offenses involve the use of deception, concealment, and the abuse of trust. Yet, environmental and workplace safety offenses also have several unique features that need to be noted. These features influence our ability to detect and control these forms of white-collar crime.

First, even though both workplace safety violations and illegal disposal of toxic wastes can have potentially devastating physical effects, they are, oddly enough, not predatory crimes. That is, the offenders do not intend to deliberately harm another person or persons. Indeed, the offenders would prefer that no one be physically harmed because the lack of obvious physical harm makes it easier to conceal the offense. When a worker dies, as happened in McWane's Tyler foundry, or children fall ill with leukemia, as happened in Woburn, it draws attention and may eventually lead to the discovery of the offense. One implication of this feature is that if the crimes do come to light and are brought into court,

the offenders can reasonably claim that they never intended to harm anyone.

Second, the offenses may be hidden within the businesses, making their discovery especially difficult. For example, the safety violations that plagued the workers in McWane's pipe foundries all occurred on premises controlled by McWane. The Cryovac Division of W. R. Grace dumped toxic waste on land that it owned. In both of these cases, the offenses are shielded from the scrutiny of outsiders. Unless and until something obviously bad happens, the only ways in which the offense is going to be discovered is through either a regulatory inspection or a complaint by an inside whistleblower. For employers like McWane, who attract only the most vulnerable and desperate employees, the likelihood of a whistleblower stepping forward is low. Also low is the likelihood of frequent and vigorous regulatory inspections. Thus, the offender's ability to control the space within which the offenses occur is an important feature of the opportunity structures for workplace safety and environmental offenses.

A third, and final, feature of these offenses also involves the opportunity structure. In a sense, the opportunity structure is shaped at least in part by the offenders themselves through their influence over the regulatory regime that governs their activities. We elaborate on this idea in more detail in Chapter 9 where we focus on legal remedies for corporate crime. So, here, we only provide a brief overview.

One way to see how the business community shapes the very opportunity structures that it takes advantage of is to consider how law making in regard to street crime differs from law making for white-collar crimes. Have you ever seen or heard of your state legislature inviting in burglars or robbers to comment on proposed changes in the law governing burglary or robbery, such as, for example, an increase in penalties? Of course not. Indeed, we are sure the question strikes you as ludicrous. Yet, something very similar to this happens whenever legislative authorities contemplate changing the laws or implementing new criminal laws regarding business activities. CEOs, industry representatives, and lobbyists are invited or invite themselves to meet with legislators or to address committees to give their input on how the law should be written and enforced. The influence of the business community over regulatory agencies and the development of

regulatory codes is even more pronounced and this is especially the case with respect to EPA and OSHA (Burns and Lynch, 2004; Calavita, 1983). In effect, the business community has a direct influence over the degree of the oversight that will be imposed on it. Less oversight equals better opportunities for crime. Ordinary street criminals should be so lucky.

THE SYMBOLIC CONSTRUCTION OF OPPORTUNITY

Introduction

One of the main points made in the preceding chapters is that white-collar crime arises out of legitimate business activities. Indeed, it is the structure and organization of particular business activities that create opportunities for particular types of white-collar crime. The types of fraud that we see today in the health care system, for example, are possible in part because of the way in which health care in the United States is organized. Imagine for a moment that consumers paid for health care directly out of their own pockets instead of having costs paid mainly by insurance companies and government programs. There would still be opportunities for fraud, but they would not be the same types of opportunities that we have today. For instance, it is difficult to imagine how one could carry off the “rent-a-patient” scheme described in Chapter 5 if individual consumers paid for doctors’ visits. All businesses and industries present opportunities for white-collar crime, and opportunities are, in a very real sense, everywhere.

Even though all businesses and industries create opportunities for white-collar crime, this does not mean that everyone involved in those economic activities is a white-collar criminal. We assume, or at least hope, that a large majority of business men and women obey the law as best they can. Not everyone is an offender. Some individuals who, because of their occupational positions, have access to particular white-

collar crime opportunities do not take advantage of them, but other individuals do take advantage.

Exactly how large or small the ratio of offenders to non-offenders is with respect to white-collar crime is a hotly debated issue. According to self-control theory, we should expect the proportion of individuals who *do not* take advantage of their access to white-collar crime opportunities to be relatively large (Hirschi and Gottfredson, 1987a, 1987b). That is, controlling for access to opportunity, the rate of white-collar offending is predicted to be low according to self-control theory, because the people who occupy white-collar type positions are presumed to be high in self-control and hence able to resist the seductions of criminal opportunities (Hirschi and Gottfredson, 1987a). As noted in Chapter 3, other scholars disagree with self-control theory on this and other points (Benson and Moore, 1992; Geis, 2000; Reed and Yeager, 1996; Simpson and Piquero, 2002; Steffensmeier, 1989). Although we cannot settle the debate here, we note that both sides implicitly agree on a couple of points. Not everyone is an offender, and not all opportunities are taken advantage of. They disagree, of course, on the proportion of potential offenders who become real offenders and the proportion of potential opportunities that result in real offenses.

If we assume that opportunities for white-collar crime are ubiquitous in the business world, then why do some potential offenders take advantage of them, whereas other individuals in similar situations do not? Why do some people decide to act on some white-collar crime opportunities but not others, at some times but not others, and in some places but not others? As we showed in Chapter 2, white-collar offenders come from a social strata different from that of ordinary street criminals. Though they may not all be members of the elite class, a large majority of them are nevertheless solid middle-class citizens. They don't appear to suffer from the personal or social pathologies that plague so many of the people who commit street offenses. Rather, they have intact families, financial assets, ties to their communities, and good reputations as law-abiding, up-standing citizens. In short, they have a lot to lose if they are caught committing a white-collar or any other sort of offense (Wheeler, 1992). So, how do they become involved in white-collar offending?

In this chapter, we argue that part of the answer to this question lies in how white-collar offenders conceive or symbolically construct opportunities. For many white-collar offenders, it is not enough merely to have access to an illegal opportunity to enrich themselves, or to avoid losing money, or to gain a business advantage. Rather, before committing the offense, many white-collar offenders must be able to somehow justify to themselves their involvement in an illegal activity so that they can maintain a non-criminal identity. That is, they must symbolically represent their situation to themselves in such a way that they see their behavior as somehow justified or as at least not improper. We also argue that, like so many things related to white-collar crime, symbolic constructions are influenced by gender, race, and social class.

The White-Collar Offender's Sense of Identity

While testifying before a congressional committee, one of the executives involved in the heavy electrical equipment antitrust case of 1961 was asked whether he knew that his meetings with his co-conspirators were illegal. He replied, "Illegal? Yes, but not criminal. I didn't find that out until I read the indictment ... I assumed that criminal action meant damaging someone and we did not do that" (Geis, 1977). This executive is typical of a large majority of the people involved in white-collar crime. He did not define his actions as criminal, even though he knew, as he admits in his testimony, that they were illegal. Most certainly he did not see himself as a criminal.

Almost all white-collar offenders are like the electrical executive who testified before Congress. Even after they have been convicted, most white-collar offenders are loath to admit that they actually have committed a crime. They go to great lengths to deny having a criminal mind (Benson, 1985). They say that they really did not intend to harm anyone and did not have a criminal intent. Although most will grudgingly admit that their actions may have violated the law somehow, they nevertheless describe their offenses as "oversights," "mistakes," or "technical violations." They present themselves as up-standing, law-abiding, moral individuals. They are committed to conventional moral values and have a respectable self-identity (Box, 1983). In their own eyes, they are not like "real criminals" (Benson, 1985). Indeed, because

they see themselves as up-standing citizens, white-collar offenders often argue that they should be spared harsh punishments for their crimes because they have “suffered enough” as a result of having their name and reputation dragged through the mud during the criminal justice process (Benson and Cullen, 1988; Benson, 1984, 1985).

It is easy, of course, to pass off the white-collar offender’s protestations as merely after-the-fact rationalizations and as attempts to put their seemingly untoward behavior in the best possible light. Undoubtedly, this interpretation is correct in some cases. Some white-collar offenders surely know that what they are doing is criminal, and they decide to go ahead to do it anyway. After they are caught, they try to lessen the stigma attached to their behavior by presenting an account of it that puts them in a favorable light. But we do not think this is true of all white-collar offenders or even very many of them. We believe that most people most of the time accept the major conventions of the moral order. Before they can violate these conventions they must first convince themselves that the violations are for some reason acceptable (Sykes and Matza, 1957). We think that white-collar offenders do this by using accounts and techniques of neutralization.

An account is a statement made by someone to explain unanticipated or untoward behavior (Scott and Lyman, 1968). There are two general forms of accounts: excuses and justifications. In making an excuse, the person admits that he or she did something wrong but denies having full responsibility for the action. For example, someone who is convicted of income tax evasion might try to excuse their behavior by saying that they were confused by the complexity of the tax codes and their violation was just an accident.

The second general form of accounts—the justification—is important for understanding white-collar crime from an opportunity perspective. In justifying untoward behavior, the person accepts responsibility for the act but denies its pejorative content. For example, a teller who embezzles money from a bank might contend that she was really owed the money because she had worked overtime earlier and her boss had refused to pay her for it. Although justifications are typically delivered after the untoward action has occurred, they nevertheless reveal something about how actors view their situations before committing their offenses. For white-collar offenders, it tells us something about how they symbolically

understood or conceived of the criminal opportunities that they took advantage of. White-collar crime opportunities have a cognitive dimension in the sense that offenders must conceive of the opportunity in such a way that they can maintain a non-criminal identity.

Cognitive Dimensions of Opportunities: Neutralizations

The world of business is imbued with a set of values and ideologies that can be used to define illegal behavior in favorable terms (Box, 1983; Sutherland, 1983). Business people follow norms, customs, and precepts that are balanced between convention and crime. These values and norms are not directly antisocial, and they do not actively endorse law breaking. Rather, they operate as extenuating conditions under which crime becomes permissible (Box, 1983:54). The availability of these norms and customs is important, because they enable potential white-collar offenders to interpret their criminal intentions and behavior in non-criminal terms. They help offenders soften the harshness of their criminal acts so as to make them appear either as "not really" against the law or as somehow justified by a higher morality than that contained in the criminal law (Box, 1983:54). In short, they help offenders symbolically construct the opportunities they confront as part of their normal occupational activities in ways that make illegal behavior seem acceptable.

It is possible for white-collar offenders to paint their illegal behavior in saintly colors, because their environment provides them with an inventory of verbal techniques for avoiding and undercutting the moral bind of the law (Box, 1983:54). These techniques are called *neutralizations* (Sykes and Matza, 1957). They permit offenders to engage in illegal behavior while at the same time not thinking of themselves as criminals. The type of neutralization used by offenders depends in part on the nature of the opportunity structure they confront. As we illustrate next, certain types of neutralizations are more likely to be used for some white-collar crimes than for others.

A technique often used by white-collar offenders is similar to what has been called, with respect to juvenile delinquents, *denying responsibility* (Sykes and Matza, 1957). In these cases, offenders know or suspect that what they are doing is illegal, but they do not conceive of themselves as

directly responsible for the act or its consequences. Two ways of doing this are by maintaining “concerted ignorance” (Katz, 1979) or “acting under orders.”

The laws regulating practices in many industries can be enormously complex and difficult to interpret. They often are vague and contain ambiguous definitions that can be interpreted in different ways, especially by individuals who would prefer not to be bothered with the trouble of conforming to regulatory requirements. Small business owners in particular may find the regulations governing their enterprises daunting and troublesome. They may feel overwhelmed by regulatory unreasonableness (Bardach and Kagan, 1982). Rather than spending time and energy to learn and understand the regulations, it is simply easier and more convenient not to know what is condoned and what is condemned. Even the officials who run well-endowed corporations often complain about the complexity of the regulatory environment and contend that any violations their companies committed were done out of ignorance and not intentionally. If you do not really know what the law is, then you cannot really intentionally break it.

Corporate leaders can also avoid taking responsibility for their actions by maintaining ignorance about the risks that they are imposing on others (Friedrichs, 2007:10). As we noted in Chapter 6, it is certainly fair to assume that in most cases where workers are sickened, injured, or killed by their work, their bosses do not intend for these tragedies to occur. Neither do corporate executives intentionally put dangerous products and drugs on the market. Their primary motive when these unfortunate events happen is always for the good of the company. They want to make the company more efficient and more profitable. Surely, efficiency and profitability are worthy objectives in a society governed by free-market principles. These objectives can be achieved by cutting costs, delaying repairs to equipment, avoiding unnecessary testing, and a host of other means. If these cost-cutting measures mean that someone accidentally gets hurt in the process, well—that is unfortunate, but it was not intended. From the executive’s point of view, without intention there can be no crime. By focusing on their intentions and interpreting all harmful consequences as accidents, corporate officials can commit corporate crimes without even acknowledging that they are crimes in the first place (Box, 1983:55; Friedrichs, 2007).

Those in leadership positions in large corporations can practice concerted ignorance in another way besides failing to learn regulatory requirements and ignoring risks. They can simply deliberately avoid knowing what their subordinates are doing. As corporations grow larger and more complex, lines of communication between different levels in the corporate hierarchy become longer and more difficult to maintain (Vaughan, 1990). Corporate leaders cannot be expected to directly supervise everyone under their command or to have an intimate knowledge of everything that goes on in their organization. What leaders can do is set general goals and objectives for the organization and hold their subordinates accountable for achieving them. Exactly how the subordinates go about achieving the objectives is not the leader's concern. If someone in the organization breaks the law while pursuing a corporate goal, corporate leaders can, with a clear conscience, claim that they never intended that to happen. With some plausibility, they can claim that they never directly ordered or authorized law breaking. Hence, they should not be held responsible for somebody else's misdeeds.

For example, in many of the corporate accounting scandals of the past decade, the chief executives asserted that they were not responsible for the fraudulent accounting practices of their companies. The lawyers for Kenneth Lay, former CEO of Enron, for instance, argued during his trial that Mr. Lay was unaware of what Anthony Fastow (the chief financial officer for Enron) and others were doing with respect to accounting. Furthermore, in the Enron case, executives argued that what they did was not a crime at all because they relied on the advice of lawyers and accountants (Coffee, 2002; Eichenwald, 2002). Similarly, Bernard Ebbers, convicted CEO of World Com, put the blame for his company's collapse squarely on the shoulders of his subordinates and claimed that he did not really understand the complex accounting rules and regulations (Ackman, 2005). Both Lay's and Ebbers's claims of ignorance were rejected by their respective juries, and both men were found guilty. However, it has worked in other cases, and the frequency with which it is invoked at trial suggests that in the upper reaches of many corporate hierarchies, concerted ignorance is standard practice.

Employees and subordinates, on the other hand, can avoid responsibility by using another means. They can view themselves as simply subjects who have to obey any orders they receive from those

above them. Though corporate leaders may claim that they did not know what was going on, subordinates feel that they are simply following orders. They are doing what their bosses want and what the corporation needs. Thus, employees may engage in actions that they know or strongly suspect are illegal without feeling responsible for the consequences. They are simply doing their jobs and if they don't do so, then the company will find others who will. In this way, the underlings who commit white-collar crimes in organizational settings can still think of themselves as essentially law abiding and morally up-standing people.

A second general technique for sanitizing criminal opportunities in business settings is to *deny the victim*. The burglar who breaks into a home knows that he is taking someone else's property. Likewise, the robber who accosts someone on the street can see the fear in the victim's eyes. These offenders know in advance of their crimes that they are going to cause an innocent person to suffer some sort of harm or loss. White-collar offenders, however, often do not have to look their victims in the eye. Indeed, the "victim" may not be an individual at all but rather a vast governmental agency, such as Medicare in the case of health care fraud. In price-fixing cases, there may be millions of victims, each of whom loses only a trivial amount of money, or the victim may be another large corporate entity. Similarly, in some types of securities offenses, such as insider trading, it may be difficult to identify victims in the traditional sense at all. In these cases, the victim, to the extent that there is one, is an amorphous class of individuals whose investment decisions might have been different if they had had access to the inside information. In all of these cases, it is possible for white-collar offenders to convince themselves that no real person will suffer as a result of their actions, and therefore there is no real criminal victim. For example, a business man convicted of price fixing looked at his offense in this manner:

It certainly wasn't a premeditated type of thing in our case as far as I can see...To me it's different than [his partner] and I sitting down and we plan, well, we're going to rob this bank tomorrow and premeditatedly go in there...That wasn't the case at all...It wasn't like sitting down and planning I'm to rob this bank type of thing.

(Benson, 1985)

This reasoning is plausible because it conforms to our common-sense construction of crime as involving a premeditated act that harms a real person. Many white-collar offenses fail to match this common-sense stereotype because the offenders do not set out intentionally to harm any specific individual. Rather, the consequences of their illegal acts fall upon impersonal organizations or a diffuse and unseen mass of people.

As Sutherland noted long ago, the laws that govern and regulate business behaviors in the United States define what lawyers call *mala prohibitum* rather than *mala in se* offenses. That is, the behaviors are considered crimes only because they have been declared so by a legislative authority as opposed to being universally recognized as innately evil and wrong. The laws that define *mala prohibitum* offenses are not universally endorsed. Rather, there is, as Sutherland put it, a conflict of standards regarding just how much the government should intervene in a free market society (Sutherland, 1983). People disagree about the need for government regulations in a whole host of areas and about how much business people can be trusted to voluntarily regulate themselves. This conflict in standards gives rise to a fourth technique used by white-collar offenders to maintain a non-criminal identity: *condemning the condemners*. If the law itself is not legitimate or necessary and if those who enforce it are not competent or trustworthy, then our moral obligation to obey the law is seriously undermined. Particularly in a free-enterprise system, business people can argue to themselves that government has no business regulating economic behavior. In their view, the competitive processes of the market should decide what is or is not acceptable, not some bureaucrat who has never had to make a profit. If business executives think that the law is unfair and that it unreasonably restricts the free-play economic forces, then they are free to violate the law (Conklin, 1977:94).

Another technique used by corporate leaders is to cast their behavior within a different context by claiming allegiance to a higher morality than that contained in the narrow legalisms of the law. There are several different forms that this *appeal to higher loyalties* can take. An employee who is asked to do something illegal may recognize that his or her behavior is wrong but argue to themselves that being loyal to their employer or organization is more important. Offenders can also make a distinction between morality and the technical requirements of the law

and claim that it is more important to do the “right” thing than the legal thing. An example of this reasoning comes from one of the executives in the Great Electrical conspiracy:

One faces a decision, I guess, at such times, about how far to go with company instructions, and since the spirit of such meetings only appeared to be correcting a horrible price level situation, that there was not an attempt to damage customers, charge excessive prices, there was no personal gain in it for me, the company did not seem actually to be defrauding ... morally it did not seem quite so bad as might be inferred by the definition of the activity itself.

(Geis, 1977)

The key point is that the offender sees him- or herself as doing something for the good of the company while not directly harming or taking unfair advantage of anyone else. From this point of view, saving or protecting the company is the moral thing to do, and it claims a higher allegiance than obeying technical requirements of the law.

Business people sometimes take an even broader view of the relationship between the law and business ethics. In a free-enterprise system, the pursuit of profit is seen as the generator of employment and wealth. It is the engine that drives our standard of living upward and ensures social welfare. Thus, the pursuit of profit can be viewed by business people as the ethical thing to do. Indeed, it is the primary ethic on which our free-enterprise system operates. It can at times supercede the ethical imperatives of the law. If obeying the law would undermine or retard the pursuit of fair profit, then the law itself is contrary to our country's most basic values and is morally inferior to business ethics. By viewing the pursuit of fair profit as the true reflection of our country's values, business people can free themselves from the moral constraints of the law and maintain a non-criminal identity even while breaking the law.

All of these techniques—denying responsibility, denying the victim, condemning the condemners, and appealing to higher loyalties—are available to potential white-collar offenders. They provide offenders with a perspective or viewpoint on their behavior that enables them to violate the law without feeling guilt or tarnishing their self-images

as respectable people. In addition, the white-collar offender's efforts to maintain a non-criminal identity benefit from the stereotypical view of crime as a lower-class phenomenon in which predatory men directly prey upon innocent victims. For white-collar offenders, neither they nor their offenses look like the official portrait of crime. The white-collar offender's crimes are, in his or her view, different from street crimes. They are technical violations that harm no one and are committed for good reasons. Hence, white-collar offenders can view their actions as not tainted by the moral stigma that attaches to lower-class crime.

Combining the Symbolic and Structural Dimensions of Opportunity

White-collar crime opportunities, thus, have a symbolic dimension in addition to their structural aspects. As we noted in Chapter 2, the structural aspects of white-collar crime opportunities include the ease with which illegitimate behavior can be disguised as legitimate or hidden from view, and the inability of victims to recognize or be aware of their victimization. Together, these features ensure that the probability of detection is low. Because of these general structural features, white-collar crime opportunities are attractive. From a purely rational point of view, an offender's decision to take advantage of the opportunity is certainly understandable. The potential benefits of the crime seem high while the potential costs seem low. Why not take advantage of the opportunity?

In this situation, the only thing holding a white-collar offender back is his or her personal sense of morality and integrity. If committing a white-collar crime would violate the offender's personal morality, then even if he or she can escape official detection, there is still a price to be paid—the loss of one's self-image as a respectable person. However, the availability of neutralizations provides white-collar offenders with a means of overcoming this last symbolic obstacle. The white-collar offense is symbolically transformed from an evil act into one that is understandable, perhaps justifiable, and certainly morally acceptable.

Risk and the Normalization of Deviance

A weakness of the opportunity perspective as applied to white-collar crime, particularly crimes committed in organizational settings, is that it implies that offenders are on some level aware that their actions are wrong or illegal. Indeed, to say that offenders must use techniques of neutralization to protect their sense of identity implies that they are aware that their behavior could be construed as illegal or morally objectionable. Neutralizations imply intentionality. Potential offenders are seen as convincing themselves that no one really will be hurt, or it's not really my fault, or the law is unfair to begin with, or it's more important to save the company and the workers' jobs than obey the law. However, this image of the offender as intentionally and knowingly violating the law may not be accurate in regard to some types of deviance that occur in large organizations.

Some white-collar crime scholars argue that large organizations are characterized by situations in which deviance can become normalized (Vaughan, 2005). Normal deviance is deviant behavior that is not recognized by actors as being deviant. Rather, according to Diane Vaughan, the leading proponent of this view, in making decisions about what to do in a risky situation, the individuals involved reinterpret information that was originally seen as a sign of potential danger so that it is viewed as acceptable and non-deviant. This reinterpretation of evidence leads to a decision that has unintended but very harmful outcomes and that in retrospect looks very foolish if not criminally negligent on the part of the decision makers.

There is a difference between neutralized deviance and normalized deviance. In neutralized deviance, actors recognize that at some level what they are doing could be viewed as deviant or illegal, but they convince themselves that they have a good reason or an excuse for going ahead anyway. In contrast, normalized deviance arises out of a more profound process of collective self-deception, in which actors, for complex reasons, really do not see their decisions as being potentially very risky with potentially very harmful consequences. How does this happen?

The best example of the process of normalizing deviance comes from the Space Shuttle *Challenger* tragedy. In 1986, the *Challenger* exploded

shortly after takeoff, killing all astronauts on board. After the tragedy, an investigation discovered evidence that appeared to indicate that officials at U.S. National Space and Aeronautics Administration (NASA) had been forewarned about the possibility of a catastrophic failure on the shuttle. Yet, in spite of the warnings, they decided to authorize the launch anyway. In retrospect, it appeared that because they were under a lot of pressure to keep the shuttle program on schedule, NASA officials had deliberately decided to ignore warnings and launch the *Challenger* even though they knew it was risky. If this scenario were true, then all those involved in the *Challenger* decision would at a minimum be guilty of misconduct if not of criminally negligent behavior. After a detailed investigation of the events leading up to the launch decision, however, Diane Vaughan argues that this interpretation is not accurate. In her view, the disaster was a mistake rather than misconduct.

The explosion that doomed the *Challenger* was caused by cold weather and a faulty O-ring. The O-rings were part of the solid rocket booster that launched the space shuttle into space. The boosters were made in sections that were connected at joints that were sealed by O-rings. In the *Challenger* disaster, the O-rings failed, allowing hot gases from the solid rocket boosters to escape, leading to the explosion. The rubber O-rings failed in part because they had become stiff owing to the cold temperature. Later in the post-tragedy investigation, it was learned that during a pre-launch conference call, some engineers at Morton Thiokol, the company that manufactured the solid rocket boosters, had argued against the launch. The engineers had protested that the cold temperatures that were predicted for launch time could cause the O-rings to fail. NASA managers, however, overrode the recommendations of the engineers and authorized the launch. It was also suggested after the tragedy that NASA had been under a great deal of political pressure to keep the space shuttles going on schedule. Thus, the original interpretation of the tragedy was that NASA managers, warned that the launch was risky, had succumbed to political pressure and violated safety rules by going ahead and authorizing the launch.

In contrast to this damning interpretation, Vaughan argues that the decision to launch the *Challenger* was taken within an historical and structural context in which it was not seen as being unreasonably risky. Rather, the risks involved were seen as normal and therefore acceptable

by official NASA decision makers. The decision makers came to this erroneous conclusion as a result of a complex set of factors that included (1) the context within which they received the information about the potentially faulty O-rings, (2) the organizational culture and political environment of NASA, and (3) structural secrecy inherent in large organizations.

The context within which the information about the potential risks posed by the O-rings was received influenced how it was interpreted. First, everyone knew that building and launching the space shuttle was an inherently risky undertaking. Much of the technology involved was new, and the overall design of the shuttle vehicle had never been tried before. In this context, technical problems were expected, and it was understood that the risks associated with flying into space could never be reduced to zero. As a result, when technical problems arose in any of the shuttle's many interactive systems, they were not interpreted as signs of potential danger. To handle the problems that occurred continually throughout the shuttle program, NASA established standardized procedures to analyze and correct them so that risk would be reduced to an acceptable, but not zero, level. Therefore, the problem with the O-rings was simply one of many technical problems that NASA engineers had encountered and handled before.

A second aspect of the context that influenced how the problems with the O-rings were interpreted involved how information on this issue accumulated over time. The *Challenger* had completed nine missions before the explosion. When previous shuttle flights had returned from space, they had, of course, been examined carefully for signs of wear and failure. In some of the flights that preceded the *Challenger*, erosion of the O-rings had been observed but not in all of them. Sometimes the cause of the erosion was identified, such as, for example, a piece of lint on an O-ring, and corrected. After the fix, O-ring erosion in subsequent flights was either reduced or not observed for a while. Importantly, there was no convincing evidence that cold temperatures could cause the O-rings to fail. In 1985, erosion began occurring regularly but did not result in any explosions. NASA engineers interpreted these results as evidence that they understood and had learned how to handle the potential risks posed by the O-rings. Taken together, the tacit assumption that a certain level of risk was unavoidable and the pattern of information

that appeared to indicate that this particular risk was being managed acceptably led NASA officials to grossly underestimate the risks posed by the faulty O-ring design.

In addition to the information context, the organizational culture and political environment of NASA also played a role in the *Challenger* disaster. During the Apollo era, NASA prided itself on technological excellence. Risk assessments were made on the basis of watertight quantitative engineering analyses. By the time the space shuttle program began, however, two other cultural mandates besides technological excellence were operating: political accountability and bureaucratic accountability.

First, NASA had to be accountable to Congress, which agreed to fund the space shuttle program in part because NASA argued that it would eventually pay for itself. Thus, in making decisions to launch or not to launch the shuttle, NASA officials had to be sensitive to how they would play to Congress. If the shuttle launches fell too far behind schedule, Congress presumably would not be happy and might reconsider its decision to fund the shuttle program.

Second, NASA became much more bureaucratic than it had been during the Apollo days. To build, launch, and maintain the shuttle was an enormously complex task, involving hundreds of contractors. To keep track of the contractors, the millions of components that made up the shuttle, and the thousands of pre-launch activities, NASA managers and engineers had to process mountains of paperwork. They had to follow rules. Following the rules contributed in an odd way to the normalization of deviance. Over time, the rules came to convey a sense of safety and security. The seductive, but flawed, logic at work here is understandable. If you follow all the rules and the shuttle flies successfully (which it had in all previous flights), then obviously following the rules meant that the shuttle is safe to fly. This kind of thinking led managers and engineers to downplay the significance of anomalies (such as warning signs that the O-rings were not working properly) that cropped up periodically in the shuttle program.

These cultural mandates—technological excellence, political accountability, and reliance on bureaucratic procedures to ensure consistency—shaped how managers interpreted signs of potential danger in general in the shuttle program and specifically how they interpreted

the conditions preceding the launch of the *Challenger*. Based on what had happened during previous flights, everything looked normal or at least acceptably close to normal. At the time it was made, the decision to launch represented conformity. Only afterward, in retrospect, did it appear to indicate deviance and rule breaking.

Like all large organizations, NASA is a complex place, and it suffers from a problem that is common to large organizations: structural secrecy. According to Diane Vaughan (2005:264),

structural secrecy refers...to how organizational structure – division of labor, hierarchy, complexity, geographic dispersion of parts – systematically undermines the ability of people situated in one part of an organization to fully understand what happens in other parts.

Inevitably, as organizations grow large, knowledge about what is going on becomes compartmentalized in subunits. One unit handles one thing, and another unit is in charge of something else. Communication between subunits becomes difficult as the people in one unit lack the expertise to really understand what the other unit is doing. Even within subunits, individuals may have only partial knowledge about tasks and goals because of the specialized division of labor. One person is an expert in one thing, and another person is an expert in something else. The problem of structural secrecy becomes particularly pronounced when the people at the bottom of the organizational hierarchy are highly specialized experts. It is difficult for organizational leaders to be fully aware of all of the information and views that those below them have on any given issue. Of course, organizations try to develop mechanisms for keeping track of what is going on and for exchanging information. They require people to fill out forms and file reports regularly. But these efforts, though they may create the appearance that everything is under control, often only add to the problem. As the flow of reports and files grows ever larger, the time that organizational leaders have to devote to reading and mastering information overload remains fixed. The more information there is the less that can be mastered. Ironically, too much information can be as bad for organizational decision making as too little.

In the case of the *Challenger* disaster, structural secrecy contributed to the normalization of deviance because it helped to conceal from decision

makers the seriousness of the O-ring problem. As you might expect, the actual process by which NASA made launch decisions at the time was very formal and rigorous. It involved a four-tiered hierarchical process called a Flight Readiness Review. The various work groups in charge of different components on the shuttle would submit their reports on the readiness of their particular component. These reports, based on careful engineering analyses, could be challenged at every stage of the flight readiness review, but the engineering analyses were not replicated outside of the work group.

This was a key weakness in the decision-making process. The people who actually made the decision to launch were dependent on information they received from those below them. They could criticize the information in a general way, and they could ask tough questions, but they did not analyze each component in the same detail as did the work groups. That is, they could not produce their own information based on their own analyses. Most of the time, the process worked. Errors were caught and corrected. Engineers were sometimes asked to redo their analyses and to make them more rigorous. Unfortunately, however, if a work group made a fundamental error but still recommended a launch that was based on tight engineering analyses, no one outside the work group was likely to see the mistake and intervene.

The *Challenger* disaster involved a combination of all of these factors—complex and ambiguous information, political and bureaucratic pressures, and structural secrecy. Together they created a situation in which a decision was taken that seemed reasonable at the time but that had disastrous consequences, consequences that no one intended and that very few thought were remotely possible. According to Vaughan, the conventional interpretation that the disaster was caused by reckless NASA officials who repeatedly ignored obvious warning signals because they wanted to keep the shuttle program on schedule is simply misguided. It does not accurately reflect what actually happened.

We end up, then, with two contrasting perspectives on the role of risk and responsibility in the *Challenger* disaster. The conventional interpretation holds NASA officials responsible. They recklessly ignored risks that they knew existed, because they were more concerned with the success of the shuttle program than the safety of the crew. Known risks were knowingly imposed on unknowing victims, that is,

the seven astronauts who made up the shuttle's crew. The alternative interpretation puts the blame on faulty organizational structures and dynamics. The risks posed by the faulty O-ring design were not fully recognized or appreciated because of organizational factors outside of the control and understanding of anyone. In other words, unknown risks were mistakenly imposed on the shuttle's crew.

The Normalization of Deviance in Other Organizations

The space shuttle program is obviously an enormously complex, risky, and one-of-a-kind undertaking. It involved thousands of individual components that had to be integrated into a complex whole to accomplish a task that had never been achieved before. Much of the technology on which the shuttle was based had to be invented and tested along the way. Because of the unique nature of the shuttle program in general and the *Challenger* disaster in particular, it is difficult to know how much we can generalize from what happened there to other organizations.

All large organizations suffer to some degree from the problem of structural secrecy. As they grow large, organizations inevitably divide into specialized subunits and become more hierarchical. Hierarchy and the division of tasks among subunits make it more difficult for information to flow and be accurately interpreted throughout the organizational structure. What happens in one part of an organization may be neither known nor fully understood in another part. Although organizational leaders can try to set up mechanisms to ensure that they know what is going on, there are limits to the amount of information that they, as fallible human beings, can absorb and interpret.

All large organizations also suffer from the problem of being accountable to parties and forces that are external to the organization. For NASA, the external accountability came from Congress, which expected a return on its investment of taxpayers' dollars in the shuttle program. Large private business organizations are accountable to their investors and stockholders, who also expect a return on their money. Having to live up to the expectations of the marketplace does not make organizational leaders into completely amoral calculators, but it does color their interpretation of information. Being accountable to external parties influences how they interpret information. The need to make

a profit, to satisfy stockholders and investors, must always be taken into account in decision making. Private, for-profit organizations must always balance the fundamental requirement to make money against the risks and harms that may be imposed on others in the process of making money.

Whether large organizations have to contend with an informational context similar to the one that confronted NASA depends on whether they are developing new products as opposed to simply marketing tried and true ones. New products always pose potential risks. These risks must be evaluated through testing. The testing process produces information that must be distributed throughout the organization and interpreted by decision makers prior to putting the product on the market. Even after a new product is placed on the market, it continues to generate information in the form of feedback regarding problems and complaints from salespeople, customers, and users. Similarly, each time the space shuttle flies, it generates new information regarding how components are performing. The interpretation of this information may be skewed by its context. Whether a product is regarded as posing acceptable versus unacceptable risks depends on how information about its performance is captured and interpreted relative to all sorts of other feedback that an organization is receiving.

One of the most tragic examples that appears to illustrate the importance of information context, and also of structural secrecy and external accountability, involves the Ford Pinto. The complete story of the Pinto is complex and involves technical details beyond the scope of this book. Accordingly, as its rise and fall has been ably reviewed elsewhere (Cullen et al., 2006), we present only a brief summary of events here.

The Pinto was a subcompact car that Ford Motor Company introduced in 1970. It was designed to compete with small cars produced by Volkswagen and Japanese manufacturers. Lee Iacocca, then chairman of Ford, had instructed his engineers to design a car that weighed less than 2,000 pounds and that cost less than \$2,000. To get the car to market quickly, the normal production time of 43 months was slashed to only 25 months (Cullen et al., 2006).

The Pinto was a popular car with consumers, with more than 1.5 million units sold in its first 6 years of production. It suffered, however,

from a potentially fatal design flaw. The gas tank had been placed too close to the rear of the car near the rear wheel axle. It was in a position where it could be easily ruptured in a rear-end collision of moderate speed. Under the right conditions, a ruptured fuel tank could leak gasoline, leading to a devastating fire in the vehicle. Tragically, this happened repeatedly during the years that the Pinto was in production, and thousands of people died or were grotesquely disfigured in fiery crashes (Cullen et al., 2006:146). The most famous accident and the one that led to the landmark criminal prosecution of Ford occurred in Elkhart, Indiana. Three teenage girls were burned to death after the Pinto they were driving was hit from behind by a van.

In retrospect, what made the Pinto story seem so outrageous was the discovery that Ford apparently had known since early in the production process that the design of the gas tank was flawed. Like all new vehicles the Pinto was crash tested, and the results of some tests indicated fuel tank ruptures were likely to occur at moderate speeds. It also appeared that Ford had known that several relatively cheap technological fixes were available that could have made the car much safer. Officials at Ford, however, appeared to have chosen not to make any changes to the design of the gas tank after a cost-benefit analysis indicated that improved safety was not warranted financially. To put it bluntly, in Ford's view, it was cheaper to pay off crash victims than to fix the gas tank.

The conventional interpretation of the Pinto case is in many ways similar to how the *Challenger* disaster was interpreted. In both cases, decision makers appear to ignore obvious warning signs and put lives in danger in pursuit of organizational goals. Yet, there is an alternative interpretation of the Pinto that resembles Vaughan's reanalysis of the *Challenger* decision (Gioia, 1992; Lee and Ermann, 1999). The Pinto was brought to market after a lengthy process of development that involved hundreds of employees working in different subunits. Although some crash tests indicated that the gas tank design was flawed, the results of other tests fell within the normal range. In short, the crash tests were inconclusive. In addition, the car met federal safety standards that were in force at the time and appeared to be as safe as other subcompacts then on the road.

Thus, according to the alternative interpretation, the employees and managers at Ford were subject to organizational forces and situational

factors that resembled those involved in the *Challenger* disaster—structural secrecy, ambiguous information, and external environmental pressures. Caught up in the rush to produce the Pinto on time, managers simply did not see the problems with the gas tank design as serious safety anomalies. They followed standard procedures. The car's problematic features were assessed according to routine practices. Unfortunately, however, by following standard practices, the people at Ford ended up “normalizing” the rear-end crash test results, that is, defining them as acceptable risks rather than recognizing them as serious safety anomalies.

The *Challenger* and Pinto cases should alert us to the potential limits of the opportunity perspective in the context of large organizations. The opportunity perspective assumes that rationality lies behind the decision to commit a white-collar crime. It assumes that people see or recognize criminal opportunities and chose to take advantage of them for their own benefit (or, in the case of some people in organizations, for the benefit of their organizations). Yet, in large organizations, people may make decisions in situations where they do not truly understand the implications of those decisions. There is a difference between ignoring or neutralizing a risk and simply not seeing the risk in the first place. There is also a difference between concerted ignorance and structural secrecy. Concerted ignorance arises when organizational leaders deliberately try to avoid learning about certain types of information in hopes of thereby reducing or eliminating legal culpability. Structural secrecy, on the other hand, arises when certain types of information do not circulate through an organization and, as a result, organizational leaders are unaware of them. Both the *Challenger* case and the Pinto case raise the possibility that under some circumstances, people in organizations simply do not see that their decisions may impose unacceptable risks on others. They misinterpret and normalize warning signs.

Of course, this exculpatory reasoning should not be carried too far. We are not suggesting, as many corporate executives do when confronted with charges of illegality, that it was all just a big mistake or a big misunderstanding. As we showed in Chapter 5, people who work in large corporations often knowingly take advantage of criminal opportunities for their own benefit or the benefit of their companies.

Likewise, it is certainly not uncommon for corporate executives to try to hide behind the sham of concerted ignorance.

Summary

In this chapter, we have argued that white-collar crime opportunities have symbolic as well as structural dimensions. The structure of a white-collar crime opportunity is determined primarily by the way in which a business or industry is organized. As we described in earlier chapters, different forms of organization create different types of opportunities. The symbolic dimension of white-collar crime opportunities refers to how potential offenders interpret their illegal activities. Most white-collar offenders do not conceive of themselves as criminals. Rather, they think of themselves as up-standing, law-abiding, and morally upright individuals. To break the law deliberately for one's personal benefit without having some sort of excuse or justification for doing so would be inconsistent with a conventional self-image. To avoid this inconsistency, white-collar offenders often use neutralizations to excuse or justify their involvement in illegal activity.

The neutralizations that are most prominently used to justify white-collar crime can be divided into four main types: denying responsibility, denying the victims, condemning the condemners, and appealing to higher loyalties. Because of the complex nature of large corporations, both those at the top and those at the bottom can deny to themselves that they are individually responsible for untoward behavior. Those at the bottom can say that they are just following orders; those at the top can argue that they cannot really be expected to know and to be held responsible for every little thing that goes wrong in a huge organization. Similarly, it is easy for white-collar offenders to think that their actions do not really harm anyone, that there are no victims in the traditional sense of an individual who suffers some sort of loss or harm. Denying the victim is not hard when the "victim" is a faceless government bureaucracy such as the Medicare system. In the eyes of business executives and professionals, government bureaucracies deserve to be condemned because they create burdensome regulations that get in the way of honest people's trying to make an honest living. Finally, white-collar offenders can rationalize to themselves that sometimes obedience to the

law is not their most important moral obligation. They have obligations to their employees and customers. It is more important to make a profit and to stay in business in order to protect people's jobs than it is to obey some obscure and probably misguided government regulation. All of these techniques of neutralization serve the same function. They help make it morally acceptable to offenders to take advantage of white-collar criminal opportunities.

Techniques of neutralization are necessary for white-collar offenders if they are aware that their actions could be characterized as illegal or unreasonably risky. It is the awareness of potential illegality that provokes the offender's use of neutralizations to undermine the moral stigma that would accompany involvement in criminal activity. However, as the cases of the space shuttle *Challenger* and perhaps the Ford Pinto show, sometimes it is not clear that organizational leaders have this level of awareness. In large organizations, deviance may, under certain circumstances, become normalized. That is, deviant or risky behavior may not be recognized as such. Rather, information that should be interpreted as a warning signal is misunderstood or reinterpreted as normal.

The normalization of deviance involves three factors. First, there is an information context that makes it difficult to separate out important messages and signals from those that can be safely ignored. This problem may arise because the information itself is ambiguous or because there is simply too much of it for people to assimilate and evaluate effectively. Second, structural secrecy hinders the flow of information to decision makers and throughout the organization. Because of the division of labor among subunits and because of task specialization, people in one part of an organization may not really understand the significance of what people in another part are doing. Third, the organization is subject to environmentally generated pressures or expectations to achieve some goal. For business corporations the pressure comes mainly from the market and the need to make a profit. For other types of organizations, such as NASA, the expectations may be political in nature, but organizations are always under some type of pressure to perform (Gross, 1978). Regardless of the source, externally generated expectations shape the way that organizations evaluate information and make decisions. They may lead decision makers to downplay risks, particularly when the

risks are imposed on someone else (Friedrichs, 2007). Taken together, these factors—information context, structural secrecy, and the pressure to perform—can create conditions in which people in large organizations make decisions that from the outside appear to be obviously deviant or criminal. Yet, from the inside, they appear normal or routine and not out of the ordinary.

THE SOCIAL DISTRIBUTION OF OPPORTUNITY

Race, Gender, and Class

Introduction

In the preceding chapters, we have argued that opportunities for white-collar crime are shaped and distributed according to the nature of the economic and productive activities of different industries. Certain types of white-collar crime are more common in some industries than others because the opportunity to commit those types of crime is built into the organization of the industry. For example, the structure of the health care insurance system makes possible certain types of fraud, deception, and abuse of trust that would be difficult if not impossible to carry out in the retail clothing industry. As a general rule that has only a few exceptions, white-collar crimes are not spread evenly across industries or occupations. The exceptions involve activities that are common to all business undertakings. For example, all businesses must engage in accounting, and in recent years, accounting fraud appears to have spread to all types of businesses and industries, indeed even to some municipal authorities (Partnoy, 2003).

Just as opportunities for white-collar crime are not distributed evenly across industries, they are also not distributed evenly across people. Some people are more likely to have access to opportunities for white-collar crime than others. In this chapter, we argue that access to opportunities for white-collar crime is powerfully influenced by social class, gender, and race. The reason why these social characteristics

matter is not complicated. Most white-collar crimes are committed within occupational settings. Indeed, it is the offender's occupation that gives rise to the opportunity to commit different types of white-collar crime. Insider trading, for example, requires that one be an organizational insider of some sort or have access to inside information, which has to come from some source inside the organization. Access to most white-collar crime opportunities is based, therefore, on having access to an occupational position. It follows that any characteristic that influences access to occupational positions will also, indirectly, influence access to opportunities to commit white-collar crime. This general rule is true even for occupational positions within the illicit markets of the underworld (Steffensmeier, 1983). Social class, gender, and race are just such characteristics.

The occupational structure is stratified along class, gender, and racial lines. Opportunities to commit white-collar crime also are stratified along these same lines. Individuals, depending on their gender, class, and race, will have more or less opportunity to offend. These characteristics, alone or in conjunction with one another, affect the white-collar crime opportunity structure.

Consider, for example, gender and the "glass ceiling." The glass ceiling refers to the barriers that women face moving into management-level positions within business. In 1991, the Department of Labor put together a group called the Glass Ceiling Commission (1995) to study the problem of women in business. The Commission's report issued in 1995 found that in spite of more women moving into the labor force and in spite of substantial advances in educational attainment by women (e.g., women held more than half the master's degrees awarded), 95% of senior managers were male. A decade later, little had changed. According to data reported in *The Economist* a few years ago, women are still largely frozen out of the top management positions. In 2005, for instance, only 8% of top managers were women. Booz Allen Hamilton, a consulting firm that tracks the comings and goings of top managers, reports that the number of senior women executives is "very low and not getting larger."

Women are not the only ones who bump their heads against the glass ceiling. Minorities also often find their way to the top blocked. The Glass Ceiling Commission Report (1995) noted that African Americans,

Latinos, and Asians were nearly nonexistent in senior management positions, with whites holding fully 97% of those positions. Thus, race, class, and gender are tightly coupled social characteristics that “reflect our nation’s entire social history ... [and] our nation’s present social structure, with income inequality and occupational immobility for some, but new levels of well-being and material success for others” (Harris, 1991:97–98).

Of course, not all occupations are equally stratified. Some occupations are more open to women and minorities than others. In this chapter, we explore how opportunities to commit white-collar crimes are stratified along class, gender, and racial lines. We also explore how these characteristics shape the risk of white-collar crime victimization.

Class, Status, and White-Collar Crime

Sutherland originally presented white-collar crime as crime committed by persons of “respectability and social status.” He set out to focus on “persons of the upper socioeconomic classes” (Sutherland, 1983:7). Most of the examples and case studies presented in *White-Collar Crime* involved powerful men, including the leaders of such stalwarts of American capitalism as the U.S. Steel Corporation, Standard Oil Company, Proctor and Gamble, and Dupont Chemicals (Sutherland, 1983:64–65). Sutherland’s influential imagery resonated throughout the following decades. Even today, the common stereotype of the white-collar offender pictures him (yes, *him*) as a white businessman who occupies a position of power and prestige, a wealthy member of America’s corporate elite. There is no shortage of examples of white male corporate elites involved in white-collar crime. Except perhaps for Martha Stewart, the principals in the most recent string of corporate scandals are almost exclusively upper-class white males.

People from other class and status backgrounds, however, are involved in white-collar crime. As we showed in Chapter 2, in the mid-1970s, most of the people convicted of white-collar type crimes in the federal court system could not be described as upper-class corporate elites. Rather, they appeared to come primarily from the middle classes of American society (Weisburd et al., 1991). Many of the subjects in the Yale and the Forst and Rhodes samples were not exactly what

Sutherland had in mind when he coined the term *white-collar crime*. The difference between Sutherland's white-collar offenders and those of more recent studies is explained in part by the changing nature of work in American society. In Sutherland's day, white-collar office work was high-status work, but that is no longer the case. Today, the labor market is dominated by low-status clerical and technical jobs. Wearing nice clothes to work and spending most of your working day in an office no longer guarantees high social status or financial success. Many white-collar jobs are little more than poorly paid dead-ends—known as “pink collar” positions for their tendency to be disproportionately filled by women (Weisburd et al., 1991).

Sutherland used the terms *status* and *class* interchangeably and did not make any sharp conceptual distinction between them. The contemporary view, however, is that although status and class are related, they are not exactly the same thing. Social status is a relative term in the sense that people can be ranked as having more or less of it, depending on their income, education, and occupation. A standard tool for measuring social status is the Duncan Socioeconomic Index (SEI). It assigns a numerical status score to an occupation based on the salary, education, and prestige associated with it. SEI scores range from 0 to 99. Professionals, such as doctors and lawyers, have higher SEI scores (92 and 93, respectively) than manual laborers, such as truck drivers or farm laborers (15 and 6, respectively).

In contrast to social status, *social class* refers to the nature and structural relationships of the occupational positions that people hold, not their standing relative to others. A widely used typology of class was developed by Erik Olin Wright. In Wright's typology, class position is based on three criteria: (1) ownership of capital assets, (2) control of organizational assets, and (3) possession of skill or credential assets (Wright, 1997). Wright distinguishes the owners of the means of production from non-owners, and managers and supervisors from others. Most of us fall into the non-owners class because we are simply employees who work for others and have no control over the means of production. Owners do have control over the means of production but, in advanced capitalistic economies such as ours, they often do not actually exercise much day-to-day control. Rather, in most modern corporations, control is exercised by professional managers and supervisors. In regard

to white-collar crime, as we show later, the distinction between owners and managers is important. The most serious white-collar crimes are not necessarily committed by those who own corporations but rather by those who have access to and control over organizational resources, for instance chief executive officers (CEOs), chief financial officers (CFOs) or even upper-level line managers and supervisors (Wheeler and Rothman, 1980).

White-collar crimes vary in organizational complexity and in the severity of their consequences. More complex offenses have a discernable pattern, involve the use of organizational resources, are committed by multiple participants, and last for a long period of time. The severity of an offense is determined by how many victims it has, the dollar value of the victims' losses, and the geographical impact of the offense. In the Yale study, the researchers found that the eight offenses they examined could be divided into a hierarchy with three levels based on the components of organizational complexity (Weisburd et al., 1991:39–42). The offenses with high complexity included antitrust violations and securities fraud. Mail fraud, false claims and bribery were moderately complex, while tax fraud, credit fraud, and bank embezzlement were usually of low complexity. Antitrust and securities offenses also ranked highest in severity, whereas false claims, credit fraud, bribery, tax fraud, and bank embezzlement ranked lowest. Mail frauds on average tended to have consequences for victims that fell between these two groups.

In the Yale study, then, the most serious and organizationally complex offenses were antitrust violations and securities fraud. Access to opportunities to commit these offenses appears to be heavily influenced by class position (see Table 8.1). Just over seven of ten of the antitrust offenders in the Yale sample were either owners or officers of their companies (71.3%). Among those convicted of securities fraud, a very similar percentage were owners or officers (68.4%). For all other offenses, only a third or less of those convicted were owners or officers (Weisburd et al., 1991:50–51). In other words, most of them were employees who probably had little or no supervisory authority and little or no power in the workplace. Opportunities to commit serious white-collar offenses, then, appear to be greatly enhanced for those who hold certain organizational positions.

The Yale study suggests that class position is more important than social status in determining access to white-collar crime opportunities. Although the antitrust and securities offenders had on average the highest SEI scores, they were not markedly higher than the SEI scores for the offenders who committed other types of offenses. For example, as shown in Table 8.1, the average SEI score for the antitrust offenders was 61.1, and for all other offense types it was more than 52.6. Recall that SEI scores range from 0 (no occupation) to 99. So, in the Yale sample, the average SEI scores for the different types of offenders fall within a fairly narrow range of the possible scores (Weisburd et al., 1991:50–51).

Social status and class position are linked in that social status provides access to organizational positions where there is greater potential for large scale white-collar offending (Wheeler and Rothman, 1980). Attending a prestigious university or professional school and garnering a law or business degree do not by themselves put one in position to be a big-time white-collar criminal—but they may open the door to such positions.

The importance of getting access to such a position is clearly shown in Stanton Wheeler’s and Mitchell Rothman’s careful analysis of the Yale data (Wheeler and Rothman, 1980). Wheeler and Rothman divided the defendants in their sample into three groups according to whether they used an occupational or organizational role in committing their offenses. Those who did not use either an occupational or organizational role were called *individual offenders* (e.g., someone who files a fraudulent

Table 8.1 Class position and socio-economic status of white-collar offenders (adapted from Table 3.1 in Weisburd et al., 1991, pp. 50–51)

	SOCIAL CLASS OWNERS OR OFFICERS (%)	AVERAGE DUNCAN SEI
Antitrust	71.3	61.1
Securities fraud	68.4	67.4
Tax	33.3	56.2
Bribery	36.8	57.3
Credit fraud	31.8	57.3
False claims	16.4	52.6
Mail fraud	28.0	55.7
Bank embezzlement	15.9	57.3

personal income tax return). Those who used their occupational role were called *occupational offenders* (e.g., a bank teller who embezzles). Finally, those who committed offenses using both their occupational and organizational position were called *organizational offenders* (e.g., an executive who violates antitrust laws). Wheeler and Rothman then examined the nature and consequences of the offenses that the different types of offenders committed. The results showed that the organizational offenders committed more complex and longer-lasting offenses than did either individual or occupational offenders. Importantly, organizational offenders also committed offenses that were significantly more costly. For individual offenders, the median take—that is, the dollar value of the offense—was \$7,523, whereas for occupational offenders, it was \$8,018. Organizational offenders, however, had a median take of \$387,274. As Wheeler and Rothman put it, those who use a formal organization to commit their offense accrue an enormous financial advantage (Wheeler and Rothman, 1980:1410–1414).

Wheeler and Rothman recognized that other variables related to both the offense and the offender might be correlated with their organizational dimension that would also influence offense magnitude. They examined this possibility and found many characteristics of the offenses did affect the size of the take. These characteristics included the duration of the offense and its geographic spread, complexity, and sophistication. In regard to characteristics of the offender, the only variables that appeared to matter were the defendant's gender and, notably, organizational position. Age, race, education, and occupational prestige, however, were not important. Even after controlling for all of these individual and offense characteristics, the use of organizational resources still significantly predicted the dollar value of the offense (Wheeler and Rothman, 1980:1416).

The organizational offenders were different from the individual and occupational offenders on a number of dimensions. On average, they were more highly educated and slightly older. They had higher occupational status and greater "impeccability," which was a composite variable that reflected the defendant's social background. It included indicators of conventionality such as employment history, religious affiliation and attendance, community group affiliations, and community reputation. As a group, the organizational offenders looked more socially

accomplished, reputable and up-standing than either the individual or occupational offenders. Wheeler and Rothman speculate on how organizational position and individual status combine to facilitate and augment white-collar offending:

...a portion of the organizational defendant's advantage accrues not through his organizational affiliation per se, but because the defendant's stature lends credibility to their claims. Occupational and organizational status tend to go together in our society – the stockbroker, for example, is also a vice-president of the firm and the lawyer is also general counsel to the corporation. This combination of organizational status and occupational position facilitates the theft of vastly greater sums of money than in the case of almost any other kind of crime, white-collar or not.

(Wheeler and Rothman, 1980:1420–1421).

Large-scale white-collar offending depends on access to organizational resources, and access is facilitated by class position. Thus, professional managers and supervisors have the most opportunity to commit serious white-collar offenses.

The Gender Gap in White-Collar Crime: Offending

One of the oldest and most widely accepted findings in criminology is that males are more likely to be offenders than females. Indeed, gender is regarded as the single best predictor of crime. This generalization appears to apply in all societies and in all historical periods (Steffensmeier and Allan, 2000). In regard to traditional street crimes, the gap between male and female offending is not the same for all offenses. It is smaller for some offenses than it is for others. For example, in 1995, the female percentage of arrests for minor property crimes was 35%. In other words, more than one-third of all the arrests for these offenses involved women. However, for crimes such as robbery, females accounted for only about 8% of arrestees (i.e., less than one in ten; Steffensmeier and Allan, 2000). The gender gap is narrower for minor property offenses and wider for more violent offenses. It is also wider for adults than it is for juveniles (Smith and Visher, 1980).

Gender is also a strong predictor of white-collar crime, and like traditional street crimes, the size of the gender gap depends on the type of white-collar crime. Recall from Chapter 2 that whereas women made up less than 5% of those convicted of antitrust or securities fraud in the Yale study, they accounted for almost half of the convicted bank embezzlers. Women offenders also were more apt to be unemployed, less-educated, and single heads of household compared with their male counterparts. Their lower status vis-à-vis male offenders translated into less complex offenses, usually without co-offenders, and yielded lower financial benefits (Daly, 1989).

Data from other studies show similar variations in the gender gap. In the Forst and Rhodes study, women constituted just under 50% of the bank embezzlers but only about 10% of those convicted of bribery and tax offenses. For example, a recent study examined three different types of fraud (asset misappropriation, corruption, and fraudulent statements) using survey data collected by the Association of Certified Fraud Examiners (Holtfreter, 2005). Asset misappropriation is defined as the theft or misuse of organizational assets by employees. It is similar to embezzlement. Corruption involves the wrongful use of business influence for personal gain. Fraudulent statements involve the falsification of organizational records or documents. Of the three types of fraud, fraudulent statements require greater access to organizational resources and are more similar to organizational as opposed to occupational offenses. In regard to gender differences and consistent with the Yale study, Holtfreter (2005:359) found that individuals who committed asset misappropriation “were significantly less likely to be male than those who committed fraudulent statements”. In other words, females were more significantly represented among those charged with asset misappropriation as compared to those charged with fraudulent statements. However, she did not find any gender differences between asset misappropriation and corruption, or corruption and fraudulent statements.

Holtfreter’s research reinforces the important link between the structure of organizations and white-collar offending opportunities. The three types of fraud differed with respect to organizational characteristics such as size, public versus privately traded firms, and internal compliance systems. For instance, she found that asset misappropriation was

committed more often in smaller organizations whereas corruption took place more often in larger (and generally publicly traded) companies. Audits and anonymous reporting systems discovered corruption (but not false statements or asset misappropriation) within firms.

Another study looked at the gender breakdown of defendants in the Enron and post-Enron financial scandals. It revealed an even smaller percentage of female defendants. Kathleen Brickey (2008) has collected data on all companies and their officers against whom fraud charges were brought in the post-Enron era (i.e., between March 2002 and July 2007). Of the 355 total defendants in these cases, only 26 (7%) were women. A cursory glance at Brickey's data show that the majority of cases have only one or no female defendant. KPMG, for instance, had 1 lone female among 22 male defendants. Another well-known case, Aldelphia, had six defendants, all of whom were male. The firm with the most women defendants in Brickey's study was Health-South, which also had a large number of individual defendants (25). One-fifth of these (5) was female. The Enron scandal, perhaps the most infamous financial fraud of this decade, produced 33 individual co-defendants, but only 3 of these were female, including Lea Fastow, Enron Assistant Treasurer and wife of the former CFO (and codefendant) Andrew Fastow.

As the studies cited clearly show, women are underrepresented in official statistics for certain types of organizationally based white-collar crimes. However, exactly what causes this pattern is open to interpretation. There are several possibilities. One interpretation is that because access to occupational and organizational positions is stratified by gender, women have fewer opportunities to engage in certain types of white-collar crime, specifically those types that allow offenders to use the organization as a weapon to deceive and conspire against victims. Hence, restricted access explains why it is unusual to find women charged with these types of white-collar crimes. This interpretation implicitly assumes that women would behave as men do, if they had access to similar positions (Adler, 1975; Simon, 1975). However, it is also possible that even if they occupied the same positions and had the same opportunities, women would behave differently from men. Perhaps women are simply more law-abiding than men. Another possibility is that men and women offend at similar rates, but the criminal justice

system and internal compliance programs are more chivalrous toward women offenders (Pollock, 1950).

Research suggests that though access to opportunities is important, it is not the only factor involved in the gender gap in white-collar crime. Men and women share some of the same pathways into crime and contact with the criminal justice system, but it is also clear that some routes into crime are gendered. Motivations for white-collar offending appear to differ by gender (Daly, 1989; Zietz, 1981). Similarly, the evidence regarding the chivalry effect is equally tenuous. What appears to be chivalry toward women offenders may actually reflect stereotypical ideas on the part of criminal justice agents about "typical" offenders being male (Silberman, 1978), judicial concerns about family responsibilities (Daly, 1994), or differences in criminal history records that favor women in sentencing. Some studies have found that women offenders are actually treated more harshly than males when the crimes they commit are non-stereotypical (Chesney-Lind, 1989; Sealock and Simpson, 1998).

These studies suggest that it is more than mere opportunity to offend that creates the gender differences in white-collar offending. Numerous books have been written about this very topic, and there are many different points of view. We suggest that there are gender differences in how men and women view opportunities for white-collar crime. These perceptual differences may arise from a number of sources. For instance, women who move into top management positions—by virtue of their uniqueness—are more visible to others. They are probably watched more carefully than males in these positions, are less "trusted" by others to go along with illicit activity, and thus more apt to blow the whistle when illegality occurs than are their male counterparts. Indeed, some argue that women may be better suited for "positions of trust and security" than men because they are better socialized, have more self-control, and score better on measures of integrity (Atkinson, 2006). Do women have a different conception of morality than males, that is, a "different voice" (Gilligan, 1993)? If so, this would affect many facets of crime, including their willingness to engage in illegal behavior, their motivations for doing so, and how they respond when they learn about criminal activity by others.

There are no studies that directly test some of these contentions, but statistics and results from other research on crime are informative. We

know, for instance, that female participation in white-collar offending has been on the rise for over thirty years (Atkinson, 2006; Simon, 1975) and that this risk is concurrent with the entry of more women into positions of trust, primarily in lower-level service positions. If women are becoming the normative rather than tokens in lower-level positions (say, as tellers in banks), they should stand out less, socialize more with others in similar positions that may increase their knowledge of and exposure to white-collar crime opportunities and neutralizations about this type of illegality. Recall that our review of Brickey's data (2008) showed that Health-South had the most female codefendants. The health care industry is not as gender stratified as other industries. Yet these data may not be the best data to address how industry structure affects offending opportunities because most of the companies in the database are service industry providers (telecommunications, financial services, retail). The absence of women as codefendants for most corporate defendants may suggest a relatively high level of vertical stratification in the service industry such that women are unwilling to participate in or have been left out of the illegal "loop."

Indeed, the data collected by Brickey may even over-represent women's involvement in corporate crime. If her data included cases involving environmental illegality or health and safety violations, which are typically associated with basic manufacturing industries that are much more stratified by gender, she might have found an even smaller number of female codefendants. Though the Brickey data are intriguing, they do not tell us whether women and men in similar positions are equally likely to take advantage of illicit opportunities. Work by Michelle Howe (2003) gives us some clues about this question. She looked at whether a group of survey respondents (77 respondents, including students and managers) were willing to engage in three types of corporate crime, including price fixing, bribery, and environmental offending (Howe, 2003). Offending conditions were experimentally varied across the offense types. Her research revealed that gender *per se* did not affect the overall offending decision (i.e., females and males appeared to be equally willing to offend). However, the decision to offend was influenced by different factors for males and females (e.g., religiosity was more important for females) and the magnitude of the effects of different factors varied by gender.

The Gender Gap in White-Collar Crime: Victimization

We have argued and presented evidence to suggest that white-collar offending opportunities are structured by gender. What we have not yet discussed is how white-collar victimization can also vary by gender. Gerber and Weeks (1992) first called attention to the lack of research on this subject by noting their inability “to locate even a single study that focuses specifically on women as victims of corporate crime” (Gerber and Weeks, 1992). Shortly thereafter, Szockyj and Fox (1996) collected a group of original essays from scholars in the field who drew on case studies focusing on how differences in gender roles (e.g., employment, consumption), male and female socialization, and legal protections, exclusions, and access to redress (such as union membership) affect contemporary patterns of corporate victimization (Szockyj and Fox, 1996). The historical record in Great Britain has been examined and found to show that rigid stereotypes and institutional sexism in the Victorian era increased the risk of fraud victimization for middle-class white women. Robb (2006:1062) suggests that these women were almost certainly targeted for victimization because they were inexperienced (and therefore “easily duped”) and because women shareholders were excluded from any board of director oversight.

Considerable evidence exists that women were sought out as victims by frauds and embezzlers who well understood their vulnerability. During the 1860s, for example, the shady company promoter Albert Grant compiled lists of widows, unmarried women and other small investors to whom he sent circulars advertising his dubious speculations. . . . Not only were these women lacking in business experience and acumen, but they were ill-placed to fight him in court should it come to that.

Women’s vulnerability was emphasized in Victorian society—and women were warned away from the unregulated capital markets at the same time their investments were highly sought.

Most criminological work on gendered white-collar victimization focuses on women as victims. Few, however, take a comprehensive look at the ways in which gendered opportunities to engage in white-collar crime affect victimization patterns that are also gendered.

Race and White-Collar Crime: Offending

Like gender, race is a characteristic that is highly correlated with traditional offending regardless how the data are collected (e.g., self-reports, victimization reports, or official statistics). The strength of the association between race and crime varies by offense type, crime seriousness, and whether participation or frequency of offending is considered. Generally, compared to whites, members of racial minority groups have higher rates of crime, are more likely to engage in more serious types of crime, and are more apt to be chronic offenders (Harris and Shaw, 2000). Yet, when the lens is shifted from traditional street crime to white-collar crime, the relationship between race and crime changes dramatically.

The typical Gestalt of crime in the United States is one of a minority offender in the foreground framed against a sea of conforming white faces (Harris and Shaw, 2000). However, as the Yale study demonstrated, the higher one moves toward Sutherland's "elite" offenders the more that image changes, shifts, and permutates. This is not to say that white-collar crime is an exclusively "white" form of crime. As we showed in Chapter 2, for certain types of lower-level white-collar offenses, such as false claims, mail fraud, and credit fraud, significant proportions of offenders are non-white. However, when it comes to middle- and upper-level white-collar offenses, most notably antitrust violations and securities fraud, non-whites are virtually nonexistent. No doubt, this is primarily because corporate CEOs, presidents, and other top managers, are overwhelmingly white and male.

Harris and Shaw (2000) found that blacks were overrepresented among lower-level offenders in the Yale data by a factor of about 2.5 to 1 at the same time that whites were overrepresented among middle-level offenders by a factor of about 2.7 to 1. The middle-level offenders were also much more likely to have a college education than the lower-level offenders. Figure 8.1 (taken from Harris and Shaw, 2000:156) demonstrates the hypothetical race ratios as one compares traditional street crime with white-collar crime.

Again, one might wonder whether opportunity alone accounts for these racial disparities in crime patterns. Harris's earlier work on gender, race, and typescripts suggests that there is more than mere

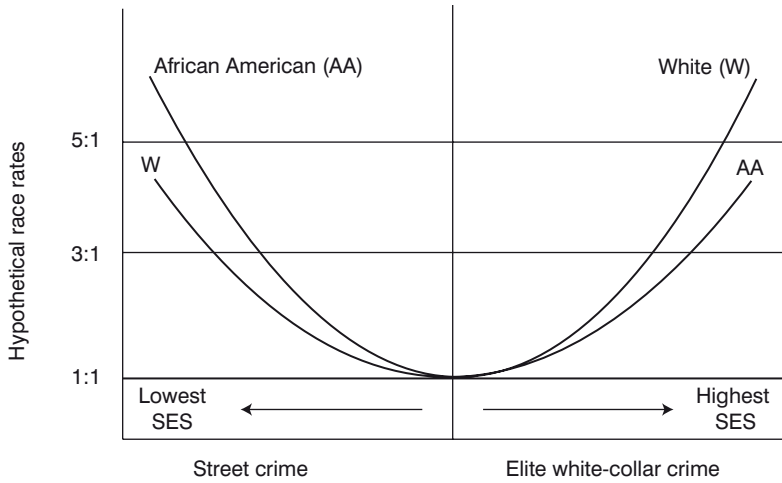


Figure 8.1 Possible relationship between crime, race, and SES.

opportunity at play here (Harris, 1976, 1977; Harris and Hill, 1982). Societal stereotypes about who commits crime are likely to affect the perceptions of potential offenders about criminal opportunities and whether they should take advantage of them. Stereotypes also influence how people respond to the illegal behavior of others when it occurs (as a leader, a business peer or associate, or justice agent). The parabolic relationship depicted in Figure 8.1 demonstrates, according to Harris and Shaw (2000:156)

[T]hat race or caste differences net of class have the greatest impact at the extreme edges of the class spectrum. Ironically, upper class whites and underclass blacks may well have something rare but theoretically very important in common: a pronounced, and perhaps highly rational, lack of fear when it comes to committing crime. On the one hand, elite whites are likely to believe that their chances of being caught or severely punished for committing crimes are very low. On the other hand, if, as an underclass black, one feels that 'the joint is like the projects, except they feed you free,' then one is likely to believe that, in getting caught for crime, you do not have very much left to lose.

An important question regarding the connection between race and white-collar crime is whether it can be reduced to social class. Perhaps African Americans are so underrepresented among elite white-collar offenders simply because there are so relatively few African-

Americans in the middle and upper social classes. In other words, can the association between race and white-collar crime be reduced to the association between social class and white-collar crime? Although this is still an open question, some believe that it will eventually be answered in the negative (Harris and Shaw, 2000). Class-advantaged whites have greater opportunities to commit certain types of white-collar crime than do class-advantaged African-Americans.

There are a couple of possible reasons why class-advantaged whites may have more opportunities. First, like women, African Americans who make it to the top of the corporate hierarchy are exceptional. Similar to women, they may feel that because of their uniqueness, they are subject to additional scrutiny and supervision: someone is watching every move they make. Hence, for them, the possibility of detection and exposure must be weighted more heavily in their calculations of the costs and benefits of potential white-collar crime opportunities. White managers and executives, on the other hand, do not have to worry as much about being watched because they do not stand out from the crowd. Second, for reasons of race, African American managers may not have access to as much social capital as white managers. They may not be as well embedded in occupational and organizational networks as whites. Access to these networks is a source of freedom and power, power to commit large-scale white-collar crimes (Hagan, 1994:101).

Race and White-Collar Crime: Victimization

The link between social class and race also has implications for white-collar victimization. Because African Americans are disproportionately represented among the lower social classes, they are also disproportionately subject to the types of white-collar crime that target the poor and disadvantaged. Regrettably, some of these are among the most serious forms of white-collar crime, including environmental offenses and workplace safety violations as well as the more mundane forms of consumer fraud.

Not all communities are created equal. In the United States, garbage dumps, hazardous waste collection facilities, incinerators, chemical plants, paper mills, and other polluting industries are almost

never located in upper-class communities. Rather, for decades, they have been situated in economically disadvantaged and politically powerless minority communities (Bullard, 1990). The residents of these communities face elevated risks of exposure to environmental toxins and hazardous wastes.

The term that has been coined to describe this situation is *environmental racism*, and it is clear that race and social class play a key role in environmental planning and decision making (Bullard, 2000). The most polluted urban environments are, not surprisingly, those that are poorest and largely inhabited by minorities. For example, in the Los Angeles area, more than 70% of African Americans and 50% of Latinos live in areas of heavy air pollution compared to only a third of whites (Bullard, p. 224). This pattern is not unique to Los Angeles or even California but rather is found nationwide. Air pollution is not the only environmental risk facing minority communities. The U.S. General Accounting Office found a strong relationship between the siting of hazardous waste facilities and the race and socioeconomic status of an area (Bullard, 2000:32). The siting of a hazardous waste facility or any potentially polluting industry near a minority community does not necessarily mean that the residents of that particular community have been victimized by environmental crime. However, as environmental crimes are found more often in some industries than others (Epstein and Hammett, 1995; Hammett and Epstein, 1993), the people who live nearby necessarily face elevated risks of victimization. More often than not, those people are minorities.

Similarly, minorities are more likely to work in occupations and industries that expose them to elevated risks of work-related disease, injury, and death (Leeth and Ruser, 2006). Using data from the Bureau of Labor Statistics, Leeth and Ruser recently found that the rate of work-related fatalities for African American and Hispanic men is 35% higher than it is for white men. To put it another way, for every three white men killed at work, four African American and Hispanic workers die. This gap in fatality rates is largely, but not entirely, accounted for by occupational differences between minorities and whites (Leeth and Ruser, 2006). Even within dangerous occupations, African Americans and Hispanics suffer proportionately more fatalities than whites. As we noted in Chapter 4, not all work-related injuries and fatalities are

the result of occupational safety violations. Most result from accidents. However, to the extent that work-related fatalities are caused by safety violations, minority workers are more likely to be the victims of those violations than white workers. As Leeth and Ruser put it, safety is segregated.

What accounts for the elevated risk of environmental and occupational victimization for minorities? Our opportunity perspective suggests two important factors: proximity and lack of access to guardianship. As implied earlier, minorities suffer proportionately more than whites from environmental and occupational violations simply because they often are in closer proximity to the places or settings in which these violations occur. For reasons of class and race, they are more likely than whites to live in the communities or work in the industries where these violations are concentrated. By lack of access to guardianship, we mean the relatively low capacity of minority group members and minority communities to call upon the state to exert control and oversight over potential offenders. Minority communities often lack economic and political power. Because of this lack of power, they are ill-equipped to resist the siting of polluting industries nearby, and potential offenders take this into account when making decisions. A particularly bald example of such thinking is provided by Bullard (2000). He quotes from a report prepared by a company called Cerrell Associates for the California Waste Management Board. This report, which focused on the siting of hazardous waste incinerators, presented a detailed profile of the types of communities most likely to organize effective resistance against incinerators. According to the report by Cerrell Associates,

All socioeconomic groupings tend to resent the nearby siting of major facilities, but middle and upper socioeconomic strata possess better resources to effectuate their opposition. Middle and higher socioeconomic strata neighborhoods should not fall within the one-mile and five-mile radius of the proposed site.

(quoted in Bullard, 2000:225).

As Bullard notes, if incinerators aren't sited near middle and upper socioeconomic neighborhoods, the only place left for them to go is low socioeconomic communities. And these are disproportionately minority communities.

Summary

This chapter has addressed how the distribution of white-collar crime opportunities is influenced by social class, gender, and race. That these demographic characteristics are strongly related to white-collar offending and victimization should not come as a big surprise. All three have obvious connections to the occupational structure, and occupations determine access to white-collar crime opportunities. Separating out the unique effects of class, race, and gender is difficult because both gender and race are closely related to class position. As a result, it is often hard to establish what is a race or gender effect independent of social class (Harris and Shaw, 2000). It seems likely that the importance of race and gender on white-collar offending depends on the circumstances. For example, within organizations, gender may have an indirect effect on white-collar offending via its effects on access to class linked occupational positions. Because of the glass ceiling, not many women hold top management positions and hence they do not have access to the criminal opportunities available to top managers. However, outside of organizations, gender may have a direct influence on offending. Women are excluded from certain types of crime groups precisely because they are women not because of their class position (Steffensmeier, 1983). Members of racial minorities may face similar obstacles. The effects of class, race, and gender on criminal offending then are complex and variable.

Social class has long been recognized as an important influence on individual involvement in crime. Prior to Sutherland, it was common place for criminologists to think that crime was concentrated in the lower social classes. However, as Sutherland and those who followed him have shown, the traditional view is mistaken. Crime is spread throughout the class structure, but different classes engage in different forms of crime. Although research on the connection between class and crime is complicated by many methodological difficulties, insofar as can be determined, traditional forms of serious predatory street crime do appear to be more common in the lower social classes (Braithwaite, 1981; Harris and Shaw, 2000). However, the connection between class and crime is reversed for serious white-collar crimes, wherein people from the upper class clearly predominate.

Although social status and social class are related, they are not exactly the same thing. Social status is a relative concept in the sense that one

can have more or less of it based on certain criteria, such as education, income, and occupational prestige. Social class, on the other hand, at least as used here, is a relational concept. It refers to whether one has or does not have control over organizational assets and resources. The most serious and complex white-collar crimes tend to be committed by those who have control over organizational assets and resources, that is, by owners, managers, and supervisors (Wheeler and Rothman, 1980). Thus, what really matters in white-collar crime is organizational position rather than social status *per se*. Attending a prestigious university and getting a business or law degree does not necessarily put one in position to commit a big-time white-collar crime, but on the other hand, it may provide access to an occupation or organizational position that does.

As the data reviewed in this chapter and previously in Chapter 2 show, women are now and have been for some time severely underrepresented in big-time white-collar crime. By big-time, we mean crimes that are organizationally complex and that have serious and widespread consequences for victims. Antitrust violations, securities fraud and, in more recent times, accounting fraud are classic examples of big-time white-collar crime. According to the Yale data, in the 1970s, women accounted for less than 1% of antitrust offenders, and according to the data collected by Kathleen Brickey, they make up a similarly small percentage of the individuals charged in the spate of accounting frauds that have come to light since the year 2000. Women make a better showing in low-level unsophisticated white-collar offenses, such as bank embezzlement.

Although a good deal of the gender gap in white-collar offending can be explained by the relative paucity of women in high-level corporate positions, this may not account for all of the disparity. Other differences between men and women may be involved besides their relative levels of access to leadership positions. Even when men and women do commit the same type of white-collar crime, research has found that they do so for different reasons (Daly, 1989; Zietz, 1981). That is, at times men and women appear to follow different motivational routes to white-collar crime. Women may be less likely to take advantage of white-collar offending opportunities for several other reasons, such as greater self-control, a lower taste for risk, a perception that they are under greater scrutiny, or greater empathy with potential victims. At

this point, it is not clear how much of the gender gap in offending is accounted for by occupational discrimination and how much by other social or psychological differences between men and women.

A similar situation confronts us with respect to race and white-collar crime. Whites are significantly overrepresented among serious white-collar offenders. As with the gender gap in white-collar offending, the racial gap is certainly largely due to disparities in access to the appropriate types of occupational positions. However, other differences may also be involved. It remains an open question whether African Americans who attain leadership positions in large organizations engage in white-collar crime at the same rate as whites or at a rate that is lower.

CONTROL, PREVENTION, AND OPPORTUNITY

Introduction

At several points in earlier chapters, we have mentioned that white-collar crime opportunities are objectively and subjectively shaped by the legal system. For instance, when the laws and regulations governing the savings and loan (S & L) industry were reformed in the 1980s to promote greater flexibility, new opportunities for fraud were created in an objective sense. Those who operated S & Ls could now legally make new kinds of loans, which created the opportunity to make the same types of loans in an illegal manner. Crime opportunities also have subjective dimensions, and they exist in the eye of the beholder. For example, when a particular type of behavior is legislatively redefined from a regulatory violation to a criminal offense, we assume that engaging in the behavior becomes subjectively less attractive to potential offenders. It now carries a much heavier burden of stigma. Recognizing a criminal opportunity depends on one's perception that a particular situation or condition can be turned to one's advantage. Criminal opportunities may be ubiquitous, but acting on those opportunities requires a sense and understanding of their illegal potential. The objective and subjective dimensions of opportunities both have implications for how we can prevent and control white-collar crime.

Broadly speaking, there are two kinds of controls that can be used to prevent or reduce white-collar crime. Some controls are based in our

legal systems of justice (criminal, civil, and regulatory) and can be called *legal controls* or *remedies*. Legal controls typically are conceived of as the penalties that are associated with various illegal acts. However, as we will discuss, the law can influence or shape criminal opportunities in other ways besides just imposing criminal penalties. Other forms of control are extralegal in the sense that they are not created or imposed by the state. Rather, they are put in place by organizations (such as businesses and nongovernmental organizations), or they are in some way internal to the individual, such as a person's values or level of self-control. With regard to corporate crime, for example, we have noted that managers may not perceive their actions and behaviors as "criminal" or morally wrong. Making false statements about products or illegally bundling them for sale is seen as a "good business practice," especially if the practice is common in the company or industry in which the firm operates. Even if managers understand that the behavior is "technically" illegal—such as meeting with competitors to fix prices (see, for example, Geis, 1977)—hubris or the desire for control can give corporate executives the sense that they are above the law or that discovery by legal authorities is unlikely (Leeper-Piquero, Exum, and Simpson, 2005; Monks and Minow, 2004). Both conditions increase the likelihood that an illicit opportunity will not be passed up (Shover and Hochstetler, 2006).

In this chapter, we focus on the ways in which current remedies for white-collar and corporate crimes (including both legal and extralegal forms) influence the opportunities and risks that confront potential offenders.

Legal Remedies

Traditional street crimes are controlled almost exclusively by the criminal law, but in the case of white-collar crime, two other kinds of legal systems—regulatory and civil—can also come into play. These three systems operate in distinct ways, with different philosophical approaches, legal standards, policing, and sanctioning methods. In this section, we focus on these different legal systems and how each intersects with opportunity structures. We distinguish among the legal interventions and between different sanction targets (individuals versus organizations).

We then discuss some of the failures and limits of law, especially the danger of over criminalization (i.e., unnecessarily broadening the scope of the criminal law) and what some have called creative compliance (McBarnet, 2005) or cultures of resistance (Bardach and Kagan, 1982). If law is perceived as illegitimate, unnecessarily restrictive, or overly punitive, firms may “fight back” through noncompliance and challenge the legal system. On the other hand, because much of the regulatory arena is not black and white but shades of “gray,” companies may seek out legal gaps to exploit in their favor. We conclude this section with suggestions for how the legal systems could be changed to become more effective in the fight against white-collar and corporate crime.

The Criminal Justice System

It goes without saying that the prevention and control of crime are two of the primary objectives and functions of the criminal justice system. Like other types of offenders, white-collar criminals can be pursued through the process of criminal prosecution. The criminal law is used to punish violators and to convey the message that the behavior in question is harmful, morally repugnant, and not to be tolerated. Legal philosophers long have argued that law and punishment are part of the social contract in which individuals surrender a degree of freedom in exchange for protection against harm and the enjoyment of peace and safety (Beccaria, 1983). From this perspective, when individuals violate the law, they are acting against the common good or common interest, and society has both a need and a responsibility to punish them.

Punishment for legal transgressions is necessary to preserve and protect society, but it will operate effectively only within the context of a “reasoned” system of justice, that is, a system that is fair and not subject to abuse (Bentham, 1948). Because there is always the potential for abuse and corruption by law enforcers, society has put in place a number of safeguards to protect individual rights and freedoms. For example, the criminal law has high evidentiary standards. To be convicted of a crime, a defendant’s guilt must be proved beyond reasonable doubt by evidence that has been gathered and handled in accordance with strict procedural rules. In addition, defendants have a number of legal rights to protect them against the misuse of authority by law enforcers.

These rights include such fundamental principles as the right to an attorney, to trial by jury, to confront witnesses, and to not be compelled to incriminate oneself. Criminal law requires proof that an offender meant to commit the illegal act and did so with a guilty mind (*mens rea*). Further, the prosecution must prove and convince a jury or judge that the offender is guilty beyond a reasonable doubt. So, for instance, in a recent criminal case against Gwendolyn Hemphill—the former executive assistant to the president of the Washington Teachers Union—for conspiracy, embezzlement, mail fraud, wire fraud, false statements, money laundering, and theft (to the tune of nearly \$5 million over a 7-year period), the government needed to prove that she actually committed the crimes (*actus reus*), and that she did so intentionally and with knowledge that her behavior was unlawful (*mens rea*).

An ideal criminal case provides a clear evidence trail (physical evidence, witnesses, and the like) linking the accused to the illegal acts. In the Hemphill case, the government was successful in its prosecution (Federal Bureau of Investigation, 2008). If Beccaria and Bentham are correct, the punishment levied against Ms. Hemphill will send a message of general deterrence to other potential offenders (e.g., fraud and embezzlement will result in criminal prosecution, time in jail, and stigmatic consequences) and to Ms. Hemphill specifically. If she actually serves prison time (currently, she is appealing her sentence), other goals of the criminal law, such as incapacitation and retribution, will also be achieved.

Although the criminal law was used successfully in the Hemphill embezzlement case, criminal prosecutions can be very challenging in a corporate context (Stone, 1975). One problem is that it is often difficult to tell precisely who should be held responsible for decision making within firms. Decision making in organizations is often fragmented and not in the hands of any one single person. And decision makers can practice concerted ignorance to shield themselves from criminal liability. Consequently, it is the case that “individual accountability is frequently displaced by corporate liability, which now serves as a rough-and-ready catch-all device” (Fisse and Braithwaite, 1993:1). When the defendant is an organization instead of an individual, it is frequently difficult to utilize the criminal law against the violator. As Celia Wells (1993:15) observes, the language of the law “assumes that state coercion

is to be exercised against an individual and that the harm which that individual might bring about will injure other specific individuals. Corporate activities do not fit that paradigm.”

Although the criminal law has adopted the notion of corporate personhood to substitute for natural persons and has broadened the reach of the law through corporate liability, it is still difficult for prosecutors to challenge corporations in criminal court (Benson and Cullen, 1998). It is not surprising then that criminal prosecutions of corporations are relatively rare. In recent years, the federal government has redirected its focus on the prosecution of responsible officers and managers with the goal of “enhanced deterrence.” The U.S. Sentencing Commission has developed new and tougher guidelines for organizational sentencing, and the U.S. Department of Justice has established new guidelines for corporate prosecutions (Cullen et al., 2006). Yet, even with this renewed attention on corporate decision makers, criminal prosecution of individuals within corporations is uncommon, expensive, and often unsuccessful. As Clinard and Yeager observe in the updated introduction to their classic book, *Corporate Crime*, criminal actions against those responsible for company oversight (i.e., board members) are highly unusual (Clinard and Yeager, 2006: xxxvi–xxxvii).

Oftentimes, a successful conviction against a major corporate crime figure is appealed (Martha Stewart is a notable exception as she chose not to appeal and served her sentence) and sometimes reversed at the higher court. Indeed, many legal scholars believe that Enron’s Jeffrey Skilling has a “reasonable” chance of overturning his 2006 conviction on some of the charges against him because the government failed to hand over evidence that would have aided his defense and because of other serious legal flaws in Skilling’s conviction (Hawn, 2007). And, when the government sets its sights on the company as a criminal offender, most successful prosecutions do not land the big fish but instead capture smaller, and relatively newer companies (Cullen et al., 2006:360; U.S. Sentencing Commission, 1993–2004).

Civil Law Enforcement

For the criminal law to work, people must believe that illegal behavior will be discovered and punished. In addition, the system must operate

in an efficient and fair manner. Yet, as we have pointed out repeatedly, one of the distinguishing features of white-collar crime is that it is hard to detect, and even when wrongdoing is detected, it is often difficult to successfully prosecute the wrongdoer in white-collar cases—particularly when the wrongdoer is a powerful corporation. Because of these obstacles, legal redress is often sought through means other than criminal law. Civil law, for instance, is easier to use. It requires a lower standard of evidence to prove responsibility (i.e., a preponderance of evidence rather than proof beyond a reasonable doubt). Moreover, the punishments, although they can be economically costly to the defendant, do not involve deprivation of freedom. Consequently, defendants have fewer legal and due process protections. As we know from one of the most infamous cases of the late twentieth century, former football player and actor O. J. Simpson was found not guilty in a criminal trial but was found responsible (and culpable) in a civil trial for the death of his ex-wife, Nicole Brown Simpson, and her companion, Ronald Goldman.

Although the Simpson murder tragedy differs substantially from the more common forms of white-collar crime, the process in civil court is similar. The government (as the moving agent) will elect to bring a civil case instead of a criminal one against a corporate offender. Our antitrust laws, for instance, have both criminal and civil provisions giving the government greater leeway to select the most appropriate justice process for the crime after taking into consideration the quality of the evidence and the perceived seriousness of the case. Civil law lacks the punitive and stigmatic capacity of criminal prosecution because it has a different goal. Rather than incapacitation, deterrence, and retribution, which are the main objectives of the criminal justice system, the goal of civil justice is to compensate and repair the damage to victims. This is achieved primarily through the use of fines.

Relative to criminal prosecution, corporate civil cases are sought more often by the state (not to mention individuals who seek tort actions against corporate offenders) and although the empirical evidence is sketchy, these cases may be more successful (see Simpson, 2002). The government needs to meet a much lower standard of evidence, and legal reforms make it easier to demand documents and compel information from offenders. Punitive sanctions (double and treble damages), when added to the civil remedies (such as fines and court injunctions), increase

pressure on defendants to settle cases. Moreover, responsible individuals, whether they are operating outside of the organizational context (such as a credit card fraudster) or within it (failure to protect workers from exposure to dangerous substances), can be sued and sanctioned. Both the government and victims can bring a civil case, although it is much more difficult for individual claimants to challenge corporate defendants than it is for the government to do so on their behalf. Unfortunately, civil litigation may be unduly costly for individual plaintiffs, especially if they must also pay the court costs for the defendant if the case is lost.

In spite of the availability and appropriateness of civil actions, their use depends on victims' recognizing their own victimization and being able to identify those responsible for it. As we discussed earlier, this link is easier to make when the relationship between offender and victim is more direct. For example, a mechanic takes money to fix a problem that is not repaired. An embezzler steals money from her employer. A physician overcharges the Medicare program. A financial consultant fails to invest his client's money and pockets it instead. In these types of cases, it may take the victim some time to determine that she or he has been victimized, but once the offense comes to light, it is relatively easy to determine the perpetrator in each instance. This is one of the reasons that criminal prosecution is more common in white-collar cases that involve a direct interaction between an individual offender and a victim. When the perpetrator is a company, however, it is often more difficult to determine exactly who the victims are and exactly who is responsible for the harm.

The Regulatory Justice System

The regulatory justice system evolved in the United States to monitor and control the behavior of economic institutions. In the regulatory system, control tends to be more persuasive and less punitive (e.g., consent agreements not to violate the law again, recalls of products, monetary penalties or warnings) (Clinard and Yeager, 2006: xiii). The goal is to bring the offender into compliance with the law. Administrative law is the most common means of legal redress in the United States for corporate offenses, but it is far from a monolithic system. Many regulatory agencies have the authority to seek criminal or civil sanctions

against corporate offenders. Some agencies can bring criminal actions themselves, whereas others must refer criminal cases to a judicial authority. Frank and Lombness suggest that there are four ways to view the regulatory justice system—each view has its own assumptions about how the system works (Frank and Lombness, 1988). These different views include the justice model, the rational-legal model, the economic model, and the conflict model. Next, we briefly define and describe these models. We then highlight the way in which each is linked to white-collar crime opportunities.

Adherents to the justice model assume that the primary goal of the regulatory justice system is the social control of economic institutions. Criminologists, in particular, draw from the work of Edwin Sutherland (1983), whose research on corporate offenders revealed that corporations generally operate outside the purview of criminal law. Instead, violators are subject to civil and regulatory statutes. Sutherland suggested that this difference was not due to any moral ambiguity about the harmfulness of white-collar crime compared with traditional street crime, or confusion over the culpability of white-collar offenders (1983:52–53). Rather, Sutherland believed that corporate crime cases were “administratively segregated” and processed differently because the offenders, who are rich and powerful, demand and receive preferential treatment (1983:6). It is out of this tradition that criminologists study civil and regulatory law by taking a criminal justice point of view. “Studies within the justice model describe the processes of investigation, adjudication, and punishment, focusing on issues of discretion, due process, and effectiveness” (Frank and Lombness, 1988:5). However, because the regulatory justice system differs in significant ways from the criminal justice system (inspectors versus police; administrative courts versus criminal courts; an emphasis on compliance versus punishment), the comparison is superficial at best (Garner, 2007; Scott, 1989).

The rational-legal model of regulation assumes that regulatory law is a response to a set of social problems, recognized and acted upon by legislators. Somewhat similar to how problem-oriented policing works, a particular problem is brought to the attention of lawmakers who then create policies and laws to “solve” the problem. Obviously some problems are much easier to “legislate” than others (product safety laws versus global warming), and a critical challenge for law-makers is

to find the right balance between law and other societal strategies to problem-solve (such as public awareness campaigns). The rational-legal approach is liberal in the sense that it assumes government imposed controls in the form of laws can improve social conditions.

Another model of regulation suggested by Frank and Lombness (1988) is the conflict model. Based on conflict theory, this approach assumes that society is composed of groups with competing and contradictory interests. The regulatory arena (agencies, laws, policies, processes, and outcomes) is just one of many sites wherein the power struggle between group interests is contested. In the competitive struggle between groups, the powerful typically win. Regulatory law, which may initially appear to be responsive to the interests of the less powerful in society (e.g., worker health and safety) is eventually usurped, perverted, and manipulated to protect the interests, rights, and privileges of business owners.

Last, for the past three decades, the most prominent model of regulation has been the economic model. This approach adopts a utilitarian “cost-benefit” strategy to assess whether, on balance, the benefits of regulation exceed its costs. Regulatory agencies are required to conduct cost-benefit analyses when major initiatives are proposed. However, it is far from clear whether it is possible to assess accurately the assorted costs and benefits of regulation (especially social costs that are not easily quantifiable). Recent attempts to quantify the costs of crime demonstrate both the utility and weaknesses of this approach (Cohen, 2000). Much of the contemporary regulatory debate has centered on whether regulation is “efficient.” Anti-regulatory critics claim that business regulation (particularly in its “social” forms) is inefficient and generally costly to a free-market system (Shover, Clelland, and Lynxwiler, 1986). An unfettered system—or at least one that has as few fetters as possible—will produce greater social good with fewer costs than a system that is stifled with legal restrictions. Critics on the other side of the debate assert that left to their own devices, corporations naturally pursue their own self-interest (profit seeking) with little regard for the common societal good. For the critics of the economic perspective, regulation of business is necessary to force corporations to behave properly and “do the right thing.”

Whether regulation can be said to “work” as a means of controlling white-collar crime depends a great deal on one’s perspective or model

of the regulatory system. For example, from a justice model point of view, the regulatory system is supposed to catch and punish violators. From this perspective, regulatory control could reasonably be seen as a stark failure. On the one hand, there are far too few inspectors to “police” corporations and too much discretion in the application of the law; the sanctions levied are not certain nor severe enough to deter corporate offenders, and cases rarely are nominated for more severe legal consequences (such as criminal enforcement referrals) although this may vary by type of offense (Simpson, Garner, and Gibbs, 2007). On the other hand, when they are challenged by charges that regulatory processes are unfair and biased, some regulators adopt a strict “legalistic” enforcement style. This style decreases discretion and the perception of unfairness, but it carries with it a lack of flexibility. All violators, regardless of circumstance, are treated in a similar manner (Bardach and Kagan, 1982). The end result is the meaningless enforcement of rules, not the control of serious white-collar violations.

Viewed from a rational-legal perspective, however, regulation can be said to have had some degree of success in that many socially costly corporate behaviors have been redefined as social problems with attached legal remedies that appear to have had a positive impact on the extent of the problem in question (e.g., accounting and stock fraud, health and worker safety, environmental pollution, consumer product safety). For example, even though the Occupational Safety and Health Administration is often criticized as being a weak and ineffectual agency, occupational safety regulations undoubtedly have had a positive effect on the lives and safety of workers. Fifty years ago, workers were injured at a rate that is estimated to have been three times higher than the injury rate now (Cullen et al., 2006:298). However, creating illegal acts out of formerly legal activity, without the support and concurrence of the regulated entity, can increase the likelihood of deception, concealment, and conspiracy especially when coupled with a legalistic approach adopted by regulators (Makkai and Braithwaite, 1994). Oppositional and criminogenic business subcultures develop that “facilitate the sharing of knowledge about methods of legal resistance and counterattack” (Braithwaite, 1989).

This problem is not unique to regulatory justice and can be a problem for criminal law as well (see Simpson, 2002). Similarly, the economic

approach also may facilitate defiance and resistance if companies and their supporters believe that regulations are overly restrictive and inefficient. Corporations learn to “game” regulators, taking advantage of the shades of gray in regulations while appearing to be socially responsible (McBarnet, 2005).

According to the conflict approach, regulation is a contested terrain. Powerful corporations utilize political supporters to push their own legislative agenda. Pro- and anti-regulation forces engage in a battle of scientific wits, both utilizing their own cost-benefit assessments and scientific experts to demonstrate the “truth” of their position. For example, one anti-global warming bureaucrat was recently quoted as saying, “You’ve got your science, I’ve got mine” (Simpson, 2006). When there is a lack of agreement between businesses, regulators, corporations and the general public regarding normative standards and the moral wrongfulness of behaviors, then regulation as a means of control is likely to be ineffectual.

Opportunities, Laws, and Regulations

From an opportunity perspective, laws and regulations are best viewed as tools that can be used to shape and control white-collar crime opportunities. Recall that white-collar crimes have certain characteristics (the offender’s legitimate access to the victim, a physical separation between the offender and victim, and the superficial appearance of legality). These characteristics give rise to the use of particular criminal techniques (e.g., deception, abuse of trust, concealment, and conspiracy). One way in which regulatory law affects white-collar crime opportunities is by setting the parameters of “legitimate” access. So, for instance, most professions require a degree or certification for an individual to offer services. Businesses often must be registered with a state or local authority before they can open their doors. There are age restrictions regarding who can enter into a contract and so forth. In effect, these regulations limit who can have legitimate access to particular types of victims. Though such regulations do not stop those who have legitimate access from abusing their positions, they at least make it more difficult for the criminally motivated to get legitimate access.

Regulations can also be used to make it more difficult or riskier for potential offenders to deceive potential victims. For example, regulations that require contractors to provide written estimates for proposed work make it more difficult (but certainly not impossible) for them to promise one thing and do another. The passage of the Sarbanes-Oxley (SOX) act in the wake of the Enron scandal provides another example. One part of the SOX act requires chief executive officers and chief financial officers to certify their company's financial records (Cullen et al., 2006:323). Failure to do so or certifying false financial statements can expose the executives to criminal penalties. In effect, this new requirement makes it much more difficult for corporate executives to feign ignorance as a way of avoiding being held responsible for fraudulent accounting. There are other examples, such as the labeling that is required on appliances regarding energy efficiency or the nutritional labels on food products. Manufacturers and retailers can try to lie and cheat, of course, on these labels. However, it seems likely that they face a greater risk that their deception will be exposed than they would face if there were no legally required labels. In general, one of the best ways that regulations can help reduce white-collar crime is by increasing transparency, making it harder for potential offenders to deceive consumers and other victims.

The Limits of the Law and Legal Controls

Christopher Stone (1975), one of the first critics to call attention to the multiple ways in which law fails to control corporate misconduct, acknowledged the burdens of applying traditional legal forms to corporations. However, Stone's observation is also relevant for other (non-corporate) kinds of white-collar offenses. Some white-collar crimes emerge as new technologies develop. For instance, there was no such thing as internet fraud until the internet was developed. For this reason, law needs to be flexible and adaptable when new opportunities emerge. The common law is impressively adjustable to changing social conditions, but when developments (like the internet) are truly innovative, the common law cannot adapt rapidly enough to the potential risks posed by such a new and expansive global phenomenon.

[T]he rapidity with which changes occur in the digital age ... makes the conventional processes of law reform cumbersome. Introducing a legislative change to accommodate the latest development in computer user authentication technologies, for example, may take years, by which time the technological development in question may be outmoded and the reform no longer applicable.

(Grabosky, Smith, and Dempsey, 2001:185)

Referencing the Enron case, Malcolm S. Salter (as quoted in Hawn, 2007) suggests that many of the acts were innovative “new ideas and new financial instruments for which there is not established accounting, or that don’t conform with old principles.”

These criticisms suggest that law, in its many forms, is—at best—marginal in its ability to restrict white-collar crime opportunities and may, on occasion, increase offending opportunities either through its limitations (gray areas) or how it affects perceptions. In the next section, we discuss some alternative remedies for the control of white-collar crime that rely on extralegal strategies.

Extralegal Remedies

Strategies to *prevent* white-collar crime that are not centered in legal controls focus mainly on reducing criminal opportunity. Routine activity theory suggests that crime results from three interrelated events that occur at the same time, in the same place: a motivated offender, a suitable target, and the lack of a capable guardian (Cohen and Felson, 1979). From this point of view, crime can be prevented by somehow decreasing the suitability of the target or increasing the level of guardianship. The suitability of a target can be reduced by target hardening (i.e., making it harder to get at the target). Guardianship can be increased by providing more, or more effective, surveillance. Prevention efforts can also focus on the motivated offender, but these may be more difficult to accomplish than increasing guardianship and hardening the crime target. From a practical point of view, however, situational crime prevention theory predicts that any intervention that disrupts the crime triad will reduce the crime.

The risk of many traditional forms of white-collar crime can be mitigated by increasing public awareness about crime risks and enhancing victim protection. For instance, after Hurricane Katrina, the Department

of Justice issued a warning to citizens regarding fraudulent relief efforts. Credit card companies now require card recipients to call and "activate" their cards before use and, when using the card remotely, to report the security code on the back of the card. Consumers are encouraged not to use debit cards to purchase items remotely, over the telephone or internet, because it is easier for fraudsters to gain unwarranted access to bank account information. Anyone who has an e-mail account is familiar with the common warnings about e-mail scams and, for those who use the internet, we are warned not to respond to or give out any personal information (such as bank account information or social security numbers) in response to "phishing" expeditions. With respect to white-collar crime control, consumer education is a form of target hardening.

To guard against employee (and consumer) theft, department stores at the turn of the twentieth century implemented a number of new ways to display merchandise (locked in glass cabinets) that provided better control of the merchandise (Abelson, 1989). Today, businesses utilize cameras, alarms, security codes, and guards; they limit access to sensitive information and products; potential employees are interviewed, psychologically tested, and assessed before employment to determine crime risks (among other things). Employees are watched by their colleagues, and suspect behavior can be anonymously reported to "hotlines." Randomized audits of accounts, expense statements, legally sanctioned policies and procedures, coupled with other types of surveillance, affect both objective and perceptual opportunities for crime.

There are obviously many creative strategies to prevent white-collar crime ranging from the simple (computer passwords) to the sophisticated (tracking economic data to pick up any unusual activity). For example, the Securities and Exchange Commission regularly tracks the buying and selling of stocks, looking for unusual patterns that may indicate some form of insider trading or other stock fraud. These kinds of prevention programs are flexible and timely, capable of responding quickly to new forms of white-collar crime. They also extend beyond the reach of our justice systems and, as such, are a broader and more comprehensive way to reduce white-collar crime opportunities. However, they tend to neglect the motivated offender.

In *Crime, Shame, and Reintegration*, John Braithwaite (1989) argues that the key to crime control rests in a society's capacity and ability to communicate the wrongfulness of behaviors to citizens and respond to the act in a manner that shames but reintegrates the offender. Although his argument focuses more on recidivism than on the initial decision to offend, his main point (which he shares with Bentham) is that there are alternatives to formal justice that carry tremendous potential for controlling all types of crime. These alternatives build around the notion that individuals are generally embedded in some kind of social network (religious organizations, families, neighborhoods, corporations, professional associations) that can impose shame and punishment outside of (or in conjunction with) the legal process. The effectiveness of these controls, like the legal process, will affect white-collar crime opportunities.

Extralegal social controls can take many different forms. The most basic form is socialization (by parents, peers, schools, churches, and businesses) that emphasize right-wrong norms and values. Ethical standards are the backbone of a social control system that promotes pro-social behavior in children and adults. Even under the best of circumstances, socialization can fail. And, in the case of white-collar crime, there are challenges to right-wrong standards that do not exist for traditional crime. For instance, surveys suggest that though rape, murder, robbery, and burglary rank consistently high in crime seriousness surveys, white-collar crime (with the exception of corporate offenses that lead to death and injury) is not viewed as seriously by the general public (for a summary, see Simpson, 2002). Although assessments of white-collar crime seriousness appear to have increased over the past 30 years, public perceptions are fickle—easily influenced by the most recent sensational case or Wall Street scandals. This fact, coupled with the *mala prohibita* nature of many corporate offenses, suggests that society has not successfully communicated the seriousness and consequences of these types of crime.

Criminologists know that the greatest risk of crime rests with those offenses around which there is little moral consensus. After the stock market scandals of the 1980s (often perpetrated by highly credentialed MBAs), several well-regarded and influential graduate programs adopted ethics training modules within traditional classes or added

specific classes in business ethics as a way to introduce future managers to the kinds of ethical (and legal) dilemmas they were apt to face in the workplace. Similarly, many companies incorporated ethics codes and ethics training as integral parts of their internal compliance programs. Although the jury is still out on whether training programs have had any impact on offending—in part because it is debatable whether those who implement the programs are “serious” about ethics—it is clear that this type of intervention has grown in popularity and legitimacy. Some regard the whole business ethics movement as a failure (Clinard and Yeager, 1980).

Because most white-collar crime occurs within organizations, it is important to consider how social control systems within organizations can affect white-collar crime opportunities. Braithwaite (1989:143) suggests that the organizational environment can effectively shame offenders when punishment for white-collar crime “maximizes the sense of shame [and] ... communicates the message that white-collar crime is as abhorrent to the community as crime in the streets.” Of course, having the potential to shame is not the same as actually shaming the offender. So, what kinds of practices are effective for corporate shaming? One of the more effective ways to sanction individual and corporate offenders is through negative publicity (Fisse and Braithwaite, 1983). One way to tell that publicity is an effective tool is to observe how corporate public relations departments go on the offensive after a negative incident (consider, for example, the infamous Exxon Valdez case). However, managers also fear discovery of their illicit activities by significant others, such as family, friends, and business associates. In fact, Simpson’s research shows that intended illegal corporate activity by managers was significantly inhibited by the potential informal sanctions brought by significant others—and this effect is equal to or actually greater than the threat of formal legal sanctions (Simpson, Garner, and Gibbs, 2007; Simpson, 2002).

Smith, Simpson, and Huang (2007) suggest that informal sanctions and formal sanctions interact to lower corporate crime offending risk. Manager’s perceptions of negative informal consequences (outcome expectancies) affect their perceptions of formal sanction threats that, in turn, lower their willingness to engage in three types of corporate offenses (price-fixing, Environmental Protection Agency offenses,

and bribery). Thus, as Ayres and Braithwaite (1992) argue, prevention and control of white-collar crime will be accomplished best through a pyramid of enforcement. Informal controls and sanctions operate at the base on the pyramid as the first (and most important set of controls), followed up the pyramid with more punitive and “formal” kinds of interventions.

Summary

In this chapter, we have discussed how legal and extralegal factors and processes can influence white-collar crime opportunities. We see how different legal systems (civil, criminal, and regulatory) have different relationships with white-collar crime opportunities. We also showed that extralegal factors, especially in conjunction with justice processes, can lower the risk of white-collar crime through their impact on opportunities. Although it should be abundantly clear that the control of white-collar crime is a difficult and never ending task, we need also to note that it is not a hopeless one. Just as ordinary street crime will never be completely eliminated, neither will white-collar crime ever disappear, but specific forms and types can be reduced at some times and in some places. In the next chapter, we summarize our main arguments and conclusions regarding white-collar crime and opportunities.

OPPORTUNITIES AND THE FUTURE OF WHITE-COLLAR CRIME

Introduction

As others have noted, the concept of white-collar crime has been ambiguous and problematic since its inception (Croall, 2001:143–144; Weisburd et al., 1991:170). In some ways, the conceptual ambiguity surrounding white-collar crime has only gotten worse as time has passed. When Sutherland first introduced the term, the debate regarding white-collar crime focused primarily on whether it should be restricted to activities that were encompassed by criminal legislation or more broadly construed to include activities that were illegal, in the sense that they violated regulatory codes, but not necessarily criminal (Sutherland, 1945; Tappan, 1947). It was a debate about what should count as crime and as the legitimate object of study for the criminologist. In the ensuing years, arguments have arisen regarding who the offender is or even *what* the offender is. Should the focus of study be limited to individuals or does it make sense to conceive of organizations themselves as offenders (Braithwaite and Fisse, 1990; Cressey, 1989)? In regard to individuals, there is disagreement over who should be included in the white-collar criminal category. Should it be restricted only to people of “respectability and high social status,” or should we acknowledge, in light of a host of recent research findings, that many people who do not have high social status commit offenses that for all intents and purposes seem to be white-collar crimes (Benson and Moore, 1992;

Croall, 1989; Weisburd et al., 1991). Thus, the debate over the concept of white-collar crime has broadened from a focus on what should count as crime to a consideration of who or what the offender is. As Croall (1989:145) has noted, it is a bit odd that criminologists have spent so much time debating the status of white-collar crime, because "crime" itself is a socially constructed and ambiguous construct..

In this book, we have tried not to get too bogged down in these debates and have opted for a more inclusive approach, one that recognizes offenders at all levels of the class structure and offenses of differing levels of illegality. This approach has the advantage of permitting more comparisons between different groups of offenders and offenses. It also enables us to analyze a very broad range of opportunities to engage in illegality and to explore how these opportunities are related to occupations, organizations, and the class structure of American society. But the main reason for adopting an inclusive approach to white-collar crime is that it permits us to focus on what we think is a more important issue: opportunities to use deception, abuse of trust, concealment, and conspiracy as techniques in criminal offending.

Thus, instead of trying to decide who is or is not the white-collar offender or what should or should not count as white-collar crime, we argued in Chapter 1 that it is more useful to focus on how occupations, organizations, industries, and government programs create situations in which some people can deceive or abuse the trust of other people or organizations for their own advantage. Although we really cannot prove the point empirically here, we expect that the use of these techniques is more common among middle- and upper-class individuals than it is among individuals from less-advantaged socioeconomic backgrounds. To use a thought experiment, imagine we could assemble in one place all of the people who committed a criminal offense in one year. Then imagine that we could divide the offenders into low, middle, and high socioeconomic status. Then within each status group, we divide the offenders further into two categories based on whether their offenses involved the use of deception or the use of some sort of physical force, including but not limited to interpersonal violence. If we were able to carry out such an experiment, we strongly expect that in the middle- and upper-status groups, the proportion in the deception category would be substantially larger than the proportion of the lower-status group in that

category. How big the difference would be is an open question. People of low socioeconomic status can use deception to cheat on taxes, welfare benefit applications, and in many other ways. So, we should not assume that the lower-class group would consist only of those who used force in their offending. Likewise, people of middle and upper socioeconomic status do occasionally commit crimes of violence and force. But the relative proportion of offenses that involve deception, we think, would rise as socioeconomic status rises. In other words, there is a strong link between social status and what we typically think of as white-collar crime, but the link between status and crime is better thought of as a continuum than as a dichotomy.

In this concluding chapter, we review the major themes that motivated this book, focusing primarily on the topic of opportunities and how these are shaped by the structure of occupational activities and organizations. Of course, it is important to recognize that the opportunity structure for white-collar crime changes constantly. New products, new services, new forms of business are constantly evolving or being invented, and technological change seems to be endless. All of these developments and changes create new opportunities for deception and, to be fair, new opportunities for controlling deception. Thus, what we have to say here will eventually become dated as new forms of white-collar crime arise. Although it is always risky to speculate about the direction of future trends, we nevertheless take that risk and address what we think will be some of the future directions of white-collar crime. Finally, we conclude with some thoughts on the policy implications of our perspective.

The Many Facets of Deception

All white-collar crimes are in some way based on deception. That is, the offender in some way tries to hide the crime itself. However, the nature of the deception varies in terms of its intended longevity, potential targets, and form. Sometimes the deception is meant or intended by the perpetrator to be permanent. The offender endeavors to design or commit the crime in such a manner that it will never be discovered. Non-self-revealing frauds in the health care system are textbook examples, and many other white-collar offenses, such as insider trading and price fixing, also are based on the idea of permanent deception. However,

not all white-collar crimes are intended to remain hidden forever. In some cases, the offender aspires only to fool the victim long enough to get whatever it is that the offender wants from the victim and then get away. An all too common example of these sorts of offenses would be the ubiquitous Nigerian e-mail scams discussed in Chapter 5. The offenders in these cases know that eventually the victim is going to figure out that he or she has been taken. However, the victim's belated recognition of the offense does not matter because the offender is confident that the victim will not be able to do anything about it. In the Nigerian case, the victims are located in other countries, and the offenders can hide behind a labyrinth of computer-created aliases and false identities.

The targets of deception in white-collar crime vary from individuals to other organizations to government programs and to the community in general. The target sometimes is a specific individual whom the offender has somehow identified as a potential victim and who is approached directly by the offender. Some investment scams are like this. At other times, the victims may be individuals, but they are not individually targeted by offenders. False advertising is a classic example. Here the offender advertises some product or service in a misleading manner hoping that someone will be fooled by the come-on. It does not really matter who falls for the scam as long as enough people do to make it profitable for the offender.

The victims of white-collar crime, however, are not always individuals. Some of the most profitable targets for white-collar offenders are actually government programs. These programs, such as the federal Medicare and Medicaid programs, distribute enormous sums of money. They make very attractive targets for those who wish to pick up some easy cash. Like government programs, business organizations can be targeted by individuals or other businesses. For example, in certain antitrust conspiracies, the victims are really other businesses who have to pay more for the products or services that they need because of price fixing among their suppliers.

Finally, for some white-collar crimes, there really may be no specific identifiable targets or victims. The target is the system of economic exchange itself. Consider, for example, insider trading whereby a corporate insider makes some sort of advantageous stock trade on the basis of inside information. The offender uses the inside information

to exploit or take advantage of the naturally occurring fluctuations in the price of stocks. The offender is not really out to hurt any particular other stock trader or organization or government program. Rather, he or she is making a trade based on superior information about what is likely to happen in the future. Other investors may, of course, be hurt if they happen to be the ones who bought or sold the stock that the offender is involved with, but they are not specifically targeted by the offender. As Sutherland and so many other white-collar crime scholars have noted, a characteristic feature of some white-collar crimes is diffuse victimization.

Deception can take different forms or, to put it another way, deception can be achieved in different ways. Recall that deception is the advantageous distortion of perceived reality (Bowyer, 1982). It is a relational concept that always involves two organisms or entities—a deceiver and a deceived.⁸ Deception occurs when one person or entity (the deceiver) somehow defeats the ability of another person or entity (the deceived) to perceive reality as it really is. How the deceiver goes about accomplishing this objective depends in part on who or what the victim is and on what the offender is trying to do to or get from the victim. There are three general forms or ways in which deception in white-collar crime is achieved: embellishing, mimicking, and hiding.

Consider first the strategy of embellishing. In many consumer and investment frauds, the offender tries to lure the victim into buying a product or service or investing in a project by somehow suggesting that the product or service is like others in its category—only better. The investment scheme is presented as solid and reliable, like other good investments, but better because it has a higher rate of return. The fraudulent home repair contractor who does shoddy work or uses substandard materials presents himself as competent and reliable, like other good contractors, but better because he is cheaper. Offenders who use embellishment hope to entice victims by making them think that buying a product or investing in a scheme is in their best interests when it really is not. Embellishment depends on that part of human nature that always seems to be looking for a good deal or something for nothing. It is a good strategy for white-collar offenders to use, because the line between being justifiably proud of your product and lying about it is often not clear. Distinguishing between the person who is presenting

his or her product in the best possible light and the person who is an outright liar is the problem for both victims and law enforcers.

Whereas successful embellishment depends on making something stand out from the ordinary, mimicking depends on doing just the opposite. The object is to make something appear normal rather than exceptional. Fraud in the federal Medicare and Medicaid systems is a perfect example. In these frauds, a physician or other type of health care professional submits an unjustified claim for reimbursement to the Medicaid program. To be successful, the offender must make his or her claim appear to be normal and legitimate. The idea is not to draw attention but rather to blend in by mimicking the millions of other legitimate claims that are paid every day. Fraud in other government programs works in much the same way. The government provides a benefit to some qualified group. The trick for the white-collar offender is to appear to be qualified for the benefit. For example, the U.S. government has a program called the Federal Crop Insurance Program (FCIP). It insures farmers against risks such as floods and natural disasters. Significantly, it also insures farmers against crop failures. A simple scheme used by some farmers is to insure field A against failure. Take the harvest from field A and record it as coming from field B, and then submit a claim to the FCIP to be indemnified for the “failure” of field A (Shover and Hochstetler, 2006). In effect, the farmer gets paid twice for the harvest of field A—once from FCIP and once from the marketplace. Like health care fraud, white-collar crime in the FCIP program depends on the claim’s appearing normal and on the inability or unwillingness of the program managers to distinguish between valid and invalid claims. Besides fraud in government programs, there are other white-collar offenses that depend on mimicking (e.g., some types of insider trading in the stock market). Recall that it is perfectly legal for insiders to buy or sell stock in their companies. It becomes illegal only if the decision to buy or sell is made on the basis of information that is not available to the market in general. Successful inside traders are those who make their moves appear to be part of normal market activity.

Hiding is another strategy that white-collar offenders use. It often underlies some of the more serious forms of white-collar crime. Consider, for example, the environmental and workplace safety offenses

discussed in Chapter 6. In many of these crimes, offenders try to hide their illegal activities from outside observers. They do not try to entice potential victims into spending their money, nor do they try to obtain money illegally from government programs. Rather, offenders engage in clandestine activities that are to their financial benefit but are also illegal and potentially harmful to others. The W. R. Grace company illegally dumped toxic wastes on its own property where it would be difficult if not impossible for outsiders to see. Similarly, behind the closed doors of its pipe manufacturing factories, McWane Incorporated routinely violated occupational safety rules and illegally exposed its workers to the risk of serious injuries or death. Hiding is also obviously a part of conspiratorial crimes such as bid rigging and price fixing as well as those that involve the abuse of trust.

The Characteristics of White-Collar Crime

Regardless of the form that it takes—embellishment, mimicking, or hiding—deception is intended to help the offender maintain the superficial appearance of legitimacy. This is one of the distinguishing features of white-collar crime and one that makes white-collar crime so difficult to control. Unlike most so-called traditional street crimes, such as robbery, burglary, auto theft, and assault, white-collar crimes are not obvious. They often do not leave visible traces of their occurrence. Even the victims may not be aware that a crime has taken place, let alone law enforcers. Efforts to control white-collar crime, therefore, must start with the problem of detection, finding the offense.

A second important feature of white-collar crime is that the offender has legitimate access to the target or victim of the offense. In all of the white-collar crimes discussed in Chapters 5 and 6, the offenders do not have to worry about gaining access to the targets of their offenses. They have a legitimate right to be there and to be involved in the kinds of activities out of which their offenses arise. Physicians, for example, are supposed to treat patients and submit claims to health insurers. Bankers are supposed to make loans. Manufacturers and retail stores are supposed to advertise and promote their products. These are all normal and expected economic activities, and they provide the basis for white-collar crime opportunities. White-collar offenders use their

occupational positions to take advantage of these legitimate activities in illegal ways.

As with the superficial appearance of legitimacy, specialized access also complicates the control of white-collar crime in a couple of ways. For one, it makes it difficult to use a standard crime prevention tool—blocking the offender's access to the target. Many conventional crimes can be prevented simply by making it difficult for the offender to gain access to the crime target. Although there are exceptions, in general this approach cannot be used to prevent white-collar crimes. Specialized access also complicates control in another way. Whatever mechanisms are put in place to control the illegal activity of white-collar offenders will necessarily affect the legal activities of their law-abiding counterparts. To use health care fraud as an example, one way to try to control it better would be for the Medicare and Medicaid programs to take more time reviewing claims before paying. Doing so would probably help the programs identify fraudulent claims more effectively, but it would also slow down the speed with which honest physicians get reimbursed. It seems likely that honest physicians will not be happy with that state of affairs and, as Sparrow notes, companies that handle claims are under pressure to process them quickly (Sparrow, 1996, 1998). Thus, because white-collar crimes are embedded in legitimate activities, the benefits of using any particular control measure always have to be balanced against the costs that its use would impose on the aspirations and creativity of those who are law abiding (Weisburd et al., 1991:191–192).

Although offenders have legitimate access to the location or target of their offenses, they are often spatially separated from the actual victims. The company owner who decides not to invest in required safety equipment may never even visit the plant in which workers are injured. The executives who conspire to fix prices never actually deal with the people who have to pay extra. Physicians who cheat Medicaid do so via computer networks and are located hundreds if not thousands of miles away from the program's main office. Spatial separation facilitates the invisibility of white-collar crime and white-collar offenders. It makes it difficult to see the crime, because the crime does not happen at a particular time and place nor does it involve a visible interaction between an offender and a victim. The separation of offender and victim is yet

another feature of white-collar crime that distinguishes it from the stereotypical image of crime.

Problems and Possibilities for Control

In some ways, it is surprising that white-collar crime is such a problem, because the people who commit white-collar offenses are assumed to be highly rational and sensitive to the pain and stigma of criminal sanctions. They are certainly much more afraid of being caught and sent to prison than ordinary street offenders (Braithwaite and Geis, 1982). The possibility of being publicly stigmatized as a criminal should act as a strong deterrent for people who have a stake in conformity and who care about their public personae (Geerken and Gove, 1975; Zimring and Hawkins, 1973). Thus, the threat of punishment ought to deter the types of people who commit white-collar crimes. Yet, white-collar crime seems to be ubiquitous. Why is it so hard to control?

Certainly, a major problem is what Shover and Hochstetler (2006) call a lack of "credible oversight." Many of those who commit white-collar crimes simply do not think they will be caught and punished. There are several reasons why this is often a safe assumption on their part. For starters, the crimes themselves are difficult to detect. Done correctly, many white-collar crimes blend into the ongoing flow of economic transactions. They do not stand out as being unusual or a cause for concern. Hence, the whole criminal justice process may never get started. There are other factors as well that work against the establishment of credible oversight.

One very important factor is the influence that white-collar offenders have over the law itself. Unlike ordinary street criminals, the people and organizations that commit white-collar crimes play an active role in shaping the laws that govern their behavior. Businesses fight whenever state or federal governments attempt to impose stricter controls or harsher penalties on their misconduct. They hire lobbyists and call legislators to do whatever they can to weaken the imposition of controls. For example, in the late 1980s and early 1990s, the Firestone Tire Company manufactured a defective tire that was used on Ford Explorers. The tire had a disturbing tendency to shred at high speeds, causing rollovers that killed hundreds of people and injured many

others (Cullen et al., 2006). When it came to light that both Ford and Firestone knew about the problems with the tire but did not recall them or notify owners of the dangers they faced, the public was outraged. Members of the U.S. Congress were also outraged. Hearings were held, executives were publicly castigated, and a law was proposed that would have made it a crime to manufacture and sell a vehicle with a serious safety defect. However, in the end, after strenuous lobbying by the U.S. Chamber of Commerce, the tire industry, the auto industry, and other manufacturers, no such law was ever passed (Cullen et al., 2006). This story is not a new one. Sutherland, himself, as well as many other white-collar crime scholars, noted that business corporations almost always resist the imposition of criminal law as a control (Sutherland, 1983).

Corporations, of course, are not always successful in their attempts to avoid the criminalization of their conduct. There are many laws against white-collar crimes, but the enforcement of these laws is not as strong as it could be. Because of their hidden nature and complexity, white-collar crimes are difficult to investigate and prosecute (Benson and Cullen, 1998; Benson, 2001a; Braithwaite and Geis, 1982). The cases are expensive and time-consuming to bring to court. Prosecutors must be selective in deciding which cases are worth the effort and which are not (Benson, 2001b; Benson et al., 1990; Maakestad et al., 1987). Hence, the criminal law is not activated against white-collar crime as often as or as effectively as it could be.

Besides the criminal law, there are other forms of legal control, including regulatory codes and the civil law. As a means of control, regulation has both strengths and weaknesses. Perhaps the most important strength of regulation, and a major difference between it and the criminal law, is that regulations are proactive. They seek primarily to prevent harms from happening in the first place rather than reacting to offenders after they have broken the law, as the criminal justice system is constrained to do. On the downside, regulatory sanctions do not carry the bite and deterrent power of criminal justice sanctions, and the whole regulatory system is subject to even greater influence by corporations than is the criminal justice system. Corporations can influence both the way in which regulations are written and the way in which they are enforced. Nevertheless, because of their proactive nature, regulatory controls accord better with our opportunity perspective than the criminal law.

From an opportunity perspective, the most effective way to control any type of crime, including white-collar crime, is not to catch and punish offenders severely. Rather, it is better to modify opportunity structures so as to make them less attractive to potential offenders. Regulations can help do this by making it more difficult for white-collar offenders to conceal their activities or to engage in deception.

The Future of White-Collar Crime

We began this book by noting that what we today call “white-collar crime” is really nothing new. Evidence of it or something very much like it can be found throughout the historical record, dating back to Biblical times and probably long before that. Indeed, though it would be impossible to prove, we suspect that it is very likely that the use of fraud and deception in transactions arose simultaneously with the invention of trade itself and perhaps even earlier with the evolution of social interaction among humans and our ancestor primate species. Indeed, evolutionary theory would suggest that deception as a technique of both survival and predation must go back nearly to the origin of life itself (Dawkins, 2004). Yet, despite its long historical pedigree, white-collar crime has always seemed less important, less threatening than the traditional forms of predatory street crime, except perhaps to a few criminologists like us who write books on the topic. There is certainly a great deal of evidence that many people think that white-collar crime is less serious and important. Sometimes statements to that effect are made directly (Wilson and Herrnstein, 1985; Wilson, 1975). However, the real evidence comes from the amount of money, time, and effort devoted to controlling and researching ordinary street crime and street offenders compared to white-collar crime. We take it as self-evident that they differ by many orders of magnitude and will continue to do so for a long time. Nevertheless, the threat posed by white-collar crime is likely to remain a significant social problem for the future. There are several reasons for our pessimism.

First, because of changes in the nature of work, more people than ever before have access to the “white-collar world of paper fraud” (Weisburd et al., 1991:183). The explosive growth in the use of computers, fax machines, scanners, copiers, the internet, and all sorts of other electronic

information-processing technologies in all industries and occupations has given more and more ordinary people access to the basic tools of white-collar crime. These are the tools that can be used to deceive others and to create an advantageous distortion of reality.

Second, another condition that fosters white-collar crime has been the tremendous growth in state largesse that has come in the wake of the welfare state (Shover and Hochstetler, 2006; Weisburd et al., 1991). In Chapter 5, we concentrated on fraud against the Medicare and Medicaid programs, because they are the largest and probably most important sites for fraud in government programs. However, it would be naive to think that fraud is limited just to federal health care programs. There are hundreds, if not thousands, of other government programs that distribute financial and other types of benefits to millions of people. For example, millions of college students apply annually for government-backed student loans. All of these programs depend on paper applications, and all of them must guard against fraudulent applications.

In the modern world, the social status of people is evaluated on the basis of their credentials (Collins, 1979). Our value as persons is determined not by our personal values or characteristics but rather by the educational degrees, awards, accomplishments, skills mastered, and prior experiences listed on our resumes. Not surprisingly, this situation creates pressure to inflate or doctor credentials so as to make ourselves look better on paper, and pressure to cheat in order to improve our chances of obtaining credentials in the first place (Weisburd et al., 1991).

The rise in agent–client relationships also has contributed to the expansion of white-collar crime opportunities. Increasingly, we must hire or depend on experts to help us navigate the world. Specialization is the order of the day. We cannot do it all ourselves. We find ourselves having to trust doctors, financial advisors, mechanics, insurance agents, pension fund managers, mortgage brokers, and a host of other professionals (Shapiro, 1990). All of these agent–client relationships carry with them the possibility of the abuse of trust. As more people enter into more agent–client relationships, an increase in abuses of trust is almost guaranteed.

A buzz word of the modern world is globalization. It represents a political, economic, and social reality that increasingly influences our

lives in myriad ways. For our purposes, the aspect of globalization that is most important involves the development of a global system of production and exchange. As we are sure you know, the label “Made in America” applies to only a small percentage of the goods—and increasingly even the services—that we use in our daily lives. From automobiles to banking to pharmaceuticals to toys to wrapping paper, much of what we buy comes from other countries. From the perspective of our opportunity theory of white-collar crime, this development makes oversight and control more difficult (Shover and Hochstetler, 2006). All of the laws and regulations that we have developed to control how goods are designed, tested, manufactured, and distributed lose much if not all of their force when companies locate outside our borders. For trans-national corporations, opportunities to exploit workers, to pollute the environment, and to manufacture faulty and dangerous products are always available somewhere. Some developing nation is always willing to trade safety for jobs and capital investments. Indeed, as Shover and Hochstetler (2006:105) nicely put it, “lax oversight is a developmental tool for some nations.”

Policy Implications

One of the most disturbing aspects of the Enron case and the others like it in the most recent round of corporate accounting frauds was that the frauds involved were new. The complex accounting schemes created by Enron’s executives represented new and creative ways of hiding information (McLean and Elkind, 2003; Swartz, 2003). These new forms of fraud allowed Enron’s leaders to avoid detection and the frauds to persist for several years. More recently, the mortgage industry has been the site of new forms of mortgage fraud (Gibeaut, 2007; Vickers and Burke, 2006). In the 1980s, many of the offenses that were committed in the savings and loan debacle represented new forms of bank fraud (Calavita and Pontell, 1990). All of these cases should remind us of an important point regarding white-collar crime: it evolves and changes with the times (Sparrow, 1996).

White-collar crime, of course, is not unique in this regard. Ordinary street criminals change with the times as well (Felson, 2002). Train robbery, safe cracking, and pickpocketing have all but disappeared as

crimes, while credit card theft has risen in popularity. Nevertheless, we suspect that white-collar crime techniques evolve more continuously and with greater rapidity than ordinary street crime. Mainly this happens because white-collar crimes are always based on some type of legitimate economic activity, and the legitimate economic world is constantly changing and evolving. Hence, white-collar offenders always have new material to work with.

Because white-collar crime continuously changes and evolves, we should not be overly optimistic regarding our ability to control or reduce it. Besides its ever-changing nature, there are other reasons why the development of white-collar crime control policies should be approached cautiously. We need to recognize that policy changes always carry risks. They can have unintended consequences and negative side-effects (Weisburd et al., 1991:190). This can be especially true with respect to white-collar crime control, because white-collar offenses are always based in some sort of legitimate economic activity. The policies that we institute to control illegal or harmful activities in an industry may inadvertently make it more difficult and costly to conduct legal activities. With these cautionary remarks in mind, we describe now a few policy implications that follow from the opportunity perspective that has been presented here.

As we demonstrated in Chapters 5 and 6, white-collar crimes take a variety of different forms. Fraud in health care is not carried out in the same way as consumer fraud in retail outlets. We need to be sensitive to these differences and focus on highly specific forms of crime (Benson and Madensen, 2007). What may work to reduce fraud in health care may be useless in the case of consumer fraud because the two offenses have different opportunity structures. To prevent any particular type of white-collar crime, we need to understand its opportunity structure and then figure out a way to intervene in and modify that specific structure. Drawing from the basic principles of situational crime prevention theory (Clarke, 1983), we suggest that the modifications should be designed so as to achieve where possible one or more of the following: (1) increasing the effort required to commit the offense, (2) increasing the risk of detection, (3) reducing the rewards associated with the offense, (4) reducing provocations for the offense, and (5) removing excuses for the offenses (Benson and Madensen, 2007).

In the case of ordinary street crime, the effort required to commit the offense is usually increased by trying to block the offenders' access to crime target. Because white-collar crimes are based on specialized access, simply blocking access is not an option for many types of white-collar crime, especially when the offense is based on the misuse of a legitimate occupational role. However, there are some instances in which variations on this strategy can be used to a degree. For example, laws and regulations that require practitioners to obtain licenses or certifications before they can practice a certain profession, in effect, block access to the target. Granted, those who have the license can misuse it, but licensing requirements, nevertheless, put limits on the number and type of people who can practice a particular line of work. They increase the effort for would-be offenders (Benson and Madensen, 2007).

With regard to consumer-related frauds, the effort required to commit an offense can also be increased through a form of target hardening. For consumer frauds to work, the offender must somehow fool the victim into thinking that he or she is legitimate. The victim must accept the offender's advantageous distortion of reality. To the extent that consumers can educate themselves so that they become harder to deceive, the offender's job becomes all that much more difficult. Individuals who can spot distortions of reality can avoid many forms of white-collar crime victimization. Simple things such as knowing who you are dealing with when you buy a product or service, getting recommendations from friends and neighborhoods, and checking references or the Better Business Bureau can help you avoid coming into contact in the first place with someone intent on defrauding you and can help you recognize when someone is trying to deceive you.

Raising the risk of detection is particularly important with respect to white-collar crime, because once the crime is exposed, it is usually relatively straightforward to identify the responsible persons or organizations (Braithwaite and Geis, 1982). Exposure is threatening to white-collar offenders. Having their names linked with anything that appears untoward or disreputable is troubling for white-collar offenders because of their public persona and self-image as up-standing, moral, and law-abiding citizens. The threat of potential negative publicity can act as a deterrent even in cases where formal sanctions are never actually administered (Fisse and Braithwaite, 1983).

In order to raise the risk of detection, however, we need to think beyond just hiring more regulators or police officers. We need to think creatively and design strategies that are focused on particular opportunity structures. For example, consider fraud in the FCIP (described earlier in this chapter). The offenders attempt to create applications that look normal. They hope that their fraudulent applications will blend in with all of the legitimate applications. Because there may be only a few fraudulent applications scattered among the many legitimate applications, it may not be cost-effective to examine individual applications to determine their credibility. According to Shover and Hochstetler (2006:102–103), the federal Risk Management Agency (RMA) figured out a more effective approach. In 2001, the RMA developed a computer program to identify FCIP claims filed for crop failures that came from producers located in counties where most other farmers were successful. The producers with the suspicious claims were sent letters informing them that a federal fraud investigation was being initiated. A year later, indemnity payouts to these farmers went down dramatically. The mere threat of exposure seemed to work as a deterrent.

Other types of offenses will require other strategies. For example, some crimes, such as most antitrust offenses, are based on conspiracies inside or between organizations. They can be very difficult to detect because they are hidden behind a corporate veil of secrecy. Only insiders have knowledge of them. Laws that promote and protect whistle blowers, such as the U.S. Whistleblower Protection Act of 1989, can be potentially helpful in these cases. They raise the likelihood that someone inside an organization will break ranks and bring information about the illegal activity outside of the organization. Of course, how well such laws work is an empirical question, and they certainly do not work perfectly. Organizations retaliate against individual whistleblowers, and sometimes these individuals pay a heavy price (Miethe and Rothschild, 1994; Rothschild and Miethe, 1999). Nevertheless, the important lesson here is that the threat of exposure is something to which white-collar offenders are sensitive. It's a tool that can be used to society's advantage.

Reducing the rewards of crime can be a very effective way of preventing ordinary street crimes. For example, so called "smart objects" that require a code or password in order to be used can make a seemingly valuable

object virtually worthless to a thief. It is pointless to steal a CD player from an automobile if it won't work after it has been taken out. Because most white-collar crimes do not involve objects, this strategy may not be applicable in many cases. However, in some situations, this strategy may work. For example, to prevent embezzlement or the misappropriation of property, organizations often require multiple signatures on checks or transactions that are valued above a certain amount. Though it might be possible for an individual employee or executive to use his or her position to steal a relatively small amount of money from his or her company, trying to take a big amount is made harder and riskier by the multiple-signature requirement. In effect, the potential reward for misappropriation has been reduced.

Television crime shows often portray criminal offenders as cold, calculating predators who stalk innocent victims. In reality, however, many crimes result from what is perceived by the offender as some sort of provocation by the victim (Felson, 2002). From the offender's point of view, the crime may represent a way to get even for a previous slight or transgression by the victim (Black, 1983). Crime control specialists have learned that to prevent ordinary street crimes, it is helpful to reduce the situational provocations that may encourage criminal activity (Benson and Madensen, 2007). For example, not allowing bars to serve drinks at two-for-one prices during happy hours may reduce the number of people who get drunk on Friday and end up in fights.

Unlike some street crimes, most white-collar crimes are not driven by spontaneous emotions. Because of their complexity they require planning on the part of the perpetrator and are not the result of impulsive decision-making. Thus, the idea of reducing provocations may not work in regards to many types of white-collar crime. Nevertheless, there are some forms of white-collar crime that may result from perceived provocations by the victim. For example, embezzlers are sometimes motivated by the feeling that they have been mistreated by their employers and really deserve the money they take (Cressey, 1953). Similarly, doctors who cheat health insurers may feel justified in doing so because they think that insurers are not being fair to them. To counteract these feelings, both Medicare and Medicaid have tried to design claims-processing systems that are simple, easy, and fast for physicians. By making it easy to file legitimate

claims, the programs hope to reduce the number of illegitimate claims filed out of frustration and stress.

The lesson to be learned from the experience of Medicare and Medicaid is that whenever large corporate entities interact with individuals in a way that is perceived as unfair, they open themselves up to the possibility of retaliation. Individuals may try to cheat or otherwise offend against large organizations because they feel frustrated and because offending against an organization as opposed to another individual is more excusable (Coleman, 1982). Organizations that fail to treat people fairly should not be surprised to find themselves victimized by the white-collar crimes of their employees, clients, and customers.

Finally, removing excuses should be another area of focus. Because white-collar offenders think of themselves as moral and up-standing citizens, they cannot easily engage in activities that are obviously illegal. White-collar offenders are loath to think of themselves or their behavior as criminal (Benson, 1985). They simply do not want to see that what they are doing is wrong. In their eyes, whatever they do is justified, and they are very creative at finding justifications for their misconduct (Box, 1983; Geis, 1977; Shover, 2007). They have to be, because the excuses and justifications are necessary conditions in the causal chain leading to the offense. Thus, white-collar offenders must not only perceive a criminal opportunity, they must be able to define the opportunity in morally acceptable terms.

This feature of the psychological makeup of white-collar offenders presents both an opportunity and an obstacle for control via the criminal law. To the extent that the criminal law can be used to convey to potential white-collar offenders that a particular form of behavior is morally wrong, it may reduce that particular type of white-collar crime. If white-collar offenders cannot define their behavior in morally acceptable terms, then they are unlikely to engage in that behavior. We need to foster cultures of compliance rather than subcultures of resistance to the law (Braithwaite, 1989). Unfortunately, as we showed in Chapter 7, white-collar offenders are very adept at avoiding or deflecting the moral strictures of the criminal law. In addition, as Sutherland pointed out long ago, one of the reasons why white-collar crime flourishes is that American society suffers from a conflict of standards in regards to the control of business (Sutherland, 1983). The seemingly never-ending conflict between the business

community and those who would regulate its harmful behavior prevents the development of a strong public consensus against white-collar crime. We need also to recognize that the values that lie at the heart of American culture, such as the pursuit of wealth and individualized success, provide a constant source of motivation for white-collar crime (Messner and Rosenfeld, 1997; Weisburd et al., 1991; Wheeler, 1992). Thus, although it has potential, the strategy of removing excuses is one that is not likely to provide a quick fix.

Summary

In this final chapter, we have summarized our main arguments and attempted to draw out some of their implications in regard to the future of white-collar crime and its control. White-collar crimes are based on deception, and we have shown how deception can be achieved in a variety of different ways. White-collar crimes have special characteristics that facilitate the use of deception. These characteristics include specialized access to the victim or target of the crime, the superficial appearance of legitimacy, and a spatial separation from the victim or target. These characteristics make the control of white-collar crime different in a number of ways from the control of ordinary street crime. The main difference is that for white-collar crime, the problem is to find the offense rather than the offender, as is the case for ordinary street crime. Just because we do not see a crime, we cannot assume that therefore there is no crime (Sparrow, 1998). The problem, as Malcom Sparrow astutely notes, is always larger than you think it is. The key to white-collar crime control depends on understanding how legitimate economic activities create opportunities to deceive, abuse trust, and conspire against others.

Because the world of legitimate economic activities evolves continuously, we need to accept the fact that white-collar crime will also continue to evolve. As technology, markets, and industries change and develop, new forms of white-collar crime will arise. Technological and economic change always create new opportunities. This means that our strategies and mechanisms of control must also change in order to keep pace, and we need to view white-collar crime control as an ongoing arms race between offenders and society.

Notes

- 1 The crime of postal forgery may seem similar to white-collar crime in that it would appear to involve deception. However, most of the time, postal forgery is simply part of a straightforward theft. Typically, the offender steals a government-issued check for a welfare or social security benefit from a mailbox and is caught when trying to cash the check by forging the recipient's endorsement. Whether the offender is charged with postal theft or postal forgery depends mainly on whether he or she is caught at the time of the theft or when trying to pass the check (Weisburd et al., 1991:17).
- 2 The districts were New Jersey, Eastern New York, Connecticut, Northern Ohio, Middle Florida, Western Oklahoma, Northern New Mexico, and Northern California.
- 3 Unfortunately, data on the exact number of prior arrests were not gathered in the Yale study.
- 4 Like most things in accounting, earnings per share are more complicated than they first appear. Technically, the formula is $EPS = \text{Net Income} - \text{Dividends on Preferred Stock} / \text{Weighted Average of Outstanding Shares}$. Accountants, financial analysts, stock brokers, and investors disagree on whether EPS is a good way to value a company or not.
- 5 Technically, in 1938, the organization was called the National Foundation for Infantile Paralysis. The phrase "March of Dimes" was coined by comedian Eddie Cantor appealing to radio listeners to send their dimes directly to the White House to fund research on the disease (www.marchofdimes.com). The National Foundation officially changed its name to the March of Dimes in 1979.
- 6 For the sake of simplicity we will ignore the whole issue of crimes of violence in which the target is another person rather than some physical object.
- 7 It's hard to make general rules about real life, as there are always exceptions. For some white-collar crimes, blocking access may indeed be a useful strategy. For example, a company may block the access of all but a few of their employees to the company's computerized payroll system and hence reduce the chance of embezzlement. In a way, though, this exception proves the rule, because the employees who are allowed to have access can still try to misappropriate funds.
- 8 Of course, self-deception is an exception to this rule and arises when the deceiver and the deceived are the same organism (Rue, 1994:88). As we are interested in deception only as it is used by white-collar offenders to victimize others, we can ignore self-deception.

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