

Notes Towards a National
Strategy to Deal with White Collar Crime

Mark H. Moore
August 1978

Preface and Acknowledgements

This paper was written in response to a short term assignment to produce a "provocative" analysis of the White Collar Crime problem. It does not reflect an enormous research or analytical effort. Still, it has had the benefit of having been reviewed and discussed by a group of people much more knowledgeable about White Collar Crime than I -- namely the group that was assembled by the National Association of District Attorneys at Battelle Research Center on July 20 and 21. I have substantially revised the paper originally presented at the conference to respond to some extremely useful conversations and criticisms. I think particularly of comments by Herb Edelhertz, Charlie Rogouin, Tully Kossack, Ed Stier, Dale Tooley and Mark Richard. I am grateful for their generosity in giving me the benefit of their expertise.

1. Introduction: Problems in the Definition of White Collar Crime

Despite serious attention, a suitable definition of the "White Collar Crime" problem has remained problematic. Two separate traditions exist. One tradition focusses on "theft through deception." It is concerned primarily with fraud, embezzlement, and general "chiselling" in economic transactions. The claim is that the aggregate economic losses associated with these offenses are large enough (relative to losses suffered in burglaries, larcenies, armed robberies, etc.) to make these offenses a matter of some urgency in planning efforts to reduce crime and victimization.

A second somewhat older tradition suggests a broader concept - that individuals who occupy powerful institutional positions in the society, acting on behalf of their own or their institution's interest, can "victimize" the rest of us in ways that are every bit as offensive as the acts of "street criminals," but escape punishment by hiding their offenses within complex institutional processes or relying on their apparent respectability to ward off prosecution and sentencing. The initial focus of this older tradition is on the ability of well positioned people to steal large sums of money with relative impunity while similar sums stolen by less well positioned people would be treated as spectacular crimes deserving the most aggressive prosecution. This older tradition joins the newer definition, then, in its concern about embezzlement and abuses of trust.

The difference, however, is that by suggesting a fairly broad notion of victimization, and by invoking powerful ideological themes associated

with "institutional power" and "unfairness" in the criminal justice system, this older sociological definition taps a quite general worry about the capacity of institutions (and the people who represent them) to exploit us and thumb their noses at the criminal justice system that is supposed to restrain them. Soon one is talking about price fixing, willful violations of environmental and safety regulations, the production and marketing of dangerous or shoddy merchandise, illegal campaign contributions to maintain favorable tax rulings, and so on. Moreover, once one includes abuses of corporate power in his definition of white collar crime, it is a little difficult to find a basis for excluding abuses of governmental and political power as well. Thus, illegal wiretapping by government agencies, election fraud managed by dominant political parties, and the solicitation of bribes or other favors by government officials might all be included in the definition of White Collar Crime. The common element of these offenses is that they are all committed with relative impunity by people in powerful institutional positions - sometimes for their own purposes, and sometimes to further the interests of their institutions.

Clearly, there are significant differences between these two definitions of white collar crime. One emphasizes economic gains to individuals as a result of deception or abuses of trust. The other emphasizes the power of institutions and individuals in institutional positions to victimize others and successfully resist criminal prosecution. While there are significant overlaps, the enormous divergence in their orientations is striking.

Of course, we could treat this problem of defining White Collar Crime with impatience - a matter of mere semantics, far divorced from pressing substantive choices about the design of a national strategy towards White Collar Crime. My own view, however, is that the definition of the problem is of the essence. How we think about the problem will at least partly determine our response - both the relative importance we give to it, and the particular way we decide to organize it. So a great deal more than words is at stake in defining the problem of White Collar Crime.

In fact, there is a special problem and temptation in defining the White Collar Crime problem. As we have seen, the concept is capable of sustaining a broad definition that taps fundamental ideological themes and widespread concerns. As such, the concept is potent in mobilizing and sustaining a broad and interested constituency. On the other hand, when it comes to directing specific programmatic efforts, the broad concept is a little too diffuse and, even worse, seems to point us towards objectives that we know will be extremely difficult to accomplish. Hence, in designing programs to deal with White Collar Crime, we tend to adopt a narrower definition more consistent with our current institutional inclinations and capabilities. This situation tempts us into committing a kind of "policy fraud." We use the broad definition of the problem when we want to attract interest, authority and resources; and we use the narrower definition when we plan programmatic action. The predictable

result is disillusionment among those who lent their support to a broad objective only to discover that the actual programmatic activity occurs along a narrower and less important front. Of course, by this time we may all be relatively inured to "policy fraud." But one might expect a group of people concerned about White Collar Crime to be more chary than most about promising effective action in a broader area than they can in fact achieve.

At the outset, then, we probably owe it to the constituency we expect to be concerned about "White Collar Crime" to define the problem in a way that loyally captures their major substantive and symbolic concerns. We should resist the temptation to define the problem in a way that is merely convenient, or consistent with emergent institutional interests and capabilities. If, after having looked at the broader social concerns at stake in this area, we decide that we want to define the problem more narrowly or more pragmatically, that will be fine. We will then at least be in a position to describe what has been left out and why. And we will not be guilty of deluding ourselves about how much of what might be considered the White Collar Crime problem is, in fact, being addressed by our policies.

2. A Broad Perspective on White Collar Crime

As individual citizens pursuing the good life, we seek to protect our property, health, freedom and sense of security against a variety of external threats - some from natural forces, and some from human agencies. To control some of the potential threats from human agencies, we pass laws prohibiting certain acts under penalty of criminal sanctions. In doing

so, we immediately enhance the citizen's sense of security by allowing him to have expectations that he will ordinarily be free from the threats represented by the prohibited acts. As a corollary, we also entitle the citizen to feel "victimized" when a human agency injures him by an act which is prohibited by law, and to call on the government for help in recouping his losses and restoring his sense of security.

Of course, existing laws invoking criminal sanctions fall way short of protecting us from all threats under human control. We can still fail to be hired, lose our job, buy shoddy merchandise, or be injured in an automobile accident without any crime being committed. Moreover, even in areas where we are protected by the existence of laws and the availability of enforcement resources, we still expect to shoulder a large share of the burden of defending ourselves. At a minimum, we are expected to complain to enforcement agencies when we have been victimized and to assist them in their investigation and prosecution efforts. More often, we are expected to assume some responsibility for preventing our victimization through a combination of vigilance, caution and vigorous self-defense. So, the protection afforded by laws and publicly supported enforcement agencies is far from comprehensive with respect to the capacity of human agencies to inflict losses on others. But, still, in a variety of areas we feel entitled to expect government protection, and to feel "victimized" when that protection fails.

Historically, our laws and enforcement efforts have been designed to protect us primarily from physical attacks and thefts by other individuals in the society. We have acted as if the capacity of other individuals to threaten us physically, or to steal our possessions when we weren't looking

were the most significant human threats to our individual sense of well being. To a great extent, our continued pre-occupation with "street crime" is a legacy of this common-law tradition - now buttressed by the existence of professional police forces who are organized primarily to protect us from these kinds of offenses and offenders.

Recently, however, we seem to have recognized that our property, health, freedom, and sense of security are vulnerable to measures other than physical attack and surreptitious entry, and to offenders who differ from violent or stealthy individuals. Specifically, we have noticed that we are vulnerable through deception and exploitation of an unequal position as well as through physical attack and stealth. Moreover, we sense that the increasing complexity of the society and the emergence of large institutions that have discretionary control over many valued resources and opportunities have dramatically increased our vulnerability to deception and exploitation. Partly in response to new, real dangers and partly in response to increased demands for government protection in areas where we used to rely only on vigorous self-defense, we have passed a great many laws (with criminal sanctions attached) that are targeted on these "new" offenses and offenders. It is this subtle but potent methods of "victimization", new social conditions that provide a substantially enlarged scope for these methods to come into play, and increased demands for governmental protection that yields the White Collar Crime problem. The relationships here are sufficiently complicated and important to merit some elaboration.

When one thinks about the methods through which an individual might be forced to give up something that he values and has a right to possess, one is surprised to discover how few there are. The obvious methods are

those associated with "street crime:" stealth and physical attack. Both methods will allow an aggressive offender to extract something he values from a surprised and reluctant victim. The victim will suffer not only material losses, but also psychological losses such as shame about his inability to defend himself, and a heightened sense of his vulnerability to other similar attacks in the future.

But beyond the measures typical of "street crime," there are two other methods which seem to me to be characteristic of "White Collar Crimes." One of these is deception. A person is tricked into giving up something he values in exchange for something he expects to be of roughly equivalent value and finds that the thing he receives is worth much less than he expected. This is the classic definition of a fraud.

A second method characteristic of White Collar offenses resembles extortion, but does not depend on a threat of physical force. It occurs when an offender has discretionary control over some resource or opportunity whose disposition is of enormous importance to the victim, and a matter of relative indifference to the offender. Moreover, there is some rule or expectation governing the disposition of the valued resource or opportunity - known to both offender and victim - which would entitle the victim to his preferred disposition. Instead of simply making the preferred disposition on the appropriate terms, however, the offender insists on some special remuneration. Depending on the value of the resource or opportunity to the victim, and the strength of the victim's claim on the resource even without the special contribution, the amount "extorted" by the offender and the sensation of "victimization" may be more or less

severe. This is the classic situation of exploiting an unequal bargaining advantage despite the fact that the terms of the exchange were supposed to have been set in advance. Perhaps "exploitation" is a good, simple word to use for this method of victimization.

These methods of victimization are characteristically associated with White Collar offenses for two different reasons. First, they occur within the context of exchanges that are part and parcel of our daily lives. There is nothing exotic about the events surrounding the offense. It is only the outcome that is unexpected and unpleasant. In fact, the offenses could probably not occur without there being exchange systems which, for the most part, involved exchanges that were reliable and fair. Second, to be successful, the offender must either appear to, or actually occupy some relatively powerful institutional position within the society. Deception works best if the offender can surround himself with the credentials and trappings that make him part of our ordinary exchange economy. He must have "bonafides." The need to occupy an institutional position is even more obvious in the case of exploitation. It is precisely the control over the resources and opportunities that institutions have to distribute that gives their representatives such enormous bargaining power vis-a-vis individuals and other organizations who have a stake in the disposition of those institutional resources and opportunities. Thus, these methods of victimization depend crucially on the existence of an organized society and the existence of institutional positions that can be occupied, or appear to be occupied, by individual offenders.

Note, also, that while the methods of victimization differ from those used in street crimes, the subjective experience of victimization may

be quite similar. The victim can take physical and economic losses - though economic losses are probably much more common than physical losses. In addition, the victim may experience the same embarrassing sense of impotence, and the same anxieties about his vulnerability in the future. In fact, in the case of "exploitation," the sense of degradation and anxiety about the future are likely to be particularly intense. The reason is that there may be nothing the victim can do to alter the conditions that originally led to his victimization: he will continue to need whatever the institution (or its representative) has to offer; they will continue to be able to extract more from him than he expected to have to pay. Since there seems to be no way out for the victim, the sense of powerlessness may be particularly acute. Thus, while methods of white collar victimization may seem subtler and less direct than the methods of street crime, they are equally cruel.

Of course, these methods of victimization have always been available to potential offenders. It is likely, however, that recent changes in both the organization of the society, and our determination to control the behavior of people within large institutions have vastly increased the extent of what is now perceived to be the White Collar Crime problem.

One significant change is the continuing elaboration of the network of exchange relationships in which individuals find themselves enmeshed. It used to be true that important economic transactions were conducted within a family and between the family and a small number of institutions with whom the family had relatively long term, stable relationships. The transactions were relatively few, relatively simple and conducted by people who had expectations of relatively long term relationships. Now, partly as a result of the continuing process of differentiation and specialization that occurs with the growth of an exchange economy, partly as a result of

increased wealth that allows us to buy larger quantities of more complicated products, and partly as a result of a vast expansion of government activities and functions paralleling the growth of the market economy, individuals find themselves dealing episodically in complicated transactions with many institutions. Moreover, many of these transactions are necessarily based implicitly on trust - at least voluntary exchanges of information, and and on some occasions, even extensions of credit. In the sheer number, the complexity and the inevitable looseness of these transactions, there are enormous opportunities for fraud and deception - sometimes by the supplier, and sometimes by the customer or client. Forged or phony checks, credit card fraud, welfare fraud by clients, medicare fraud by clients, insurance fraud, income tax evasion, and even false customs declarations are all examples of consumers, clients, or people with financial obligations to an institution taking advantage of the looseness of the economic transactions that connect them to the institution to victimize the institution. Real estate fraud, home repair frauds, deceptive advertising and credit practices, and shoddy or fraudulent auto repairs are all examples of stealing by institutions who take advantage of the confusion marking these transactions. In effect, the facts that we make many more transactions; that the transactions involve relatively complex products, opportunities, and obligations; and that long term reciprocal relationships among individuals have been shattered by the complexity of the market; have dramatically reduced the capacity of agents on either side of the transaction to police the transaction and defend their interests: it is hard to know exactly what is happening in the transaction, tempting to take advantage of the ignorance, and precious little incentive to resist the temptation to protect a long term personal relationship.

A second significant change related to, but different than the elaboration of the exchange economy is the emergence of large institutions

with discretionary control over resources and activities which are extremely valuable to other individuals. The emergence of these large institutions affects the opportunities to commit white collar offenses in three important and different ways.

First, these institutions lend credibility and distribute authority among individual representatives. In doing so, they increase the opportunities for individuals who represent the institutions to deceive and exploit other individuals who do business with or have an interest in the activities of the institution. An auto repair man working for a nationally recognized company can get away with a shoddy repair more easily than an unaffiliated mechanic simply by relying on the reputation of the larger institution. A welfare case-worker may get away with under estimating the benefits for which an applicant is eligible by virtue of his official position and apparent expertise. Similarly, hiring and contracting officials in both public and private agencies may abuse their discretionary authority over these crucial decisions by extracting special favors from people or firms who could reasonably expect to be chosen by merit alone. And government officials with the discretionary authority to distribute a subsidy, grant a privilege, or enforce a costly obligation may "extort" some payment or service from individuals even when the citizens have a clear right under current policies to receive the subsidy, be granted the privilege, or escape the obligation. As the reach of these institutions has grown, so have the opportunities of people who represent these institutions to deceive and exploit over individuals who do business with them.

Second, the institutions have become relatively vulnerable victims of white collar offenses as well as potential offenders. The reason is simply that the institutions distribute control over their resources and

influence over their operations and policies to a large number of individuals who man positions throughout the organization. These "insiders" may take advantage of their position to steal the organization's assets, depart from an operational policy in exchange for a fee from outsiders who have an interest in changing current policies, or simply sell "inside" information about the organization's plans, interests or capabilities. Thus, bank tellers embezzle money, payroll clerks collude with line supervisors to create false payroll records, contracting officers arrange for kickbacks in making procurement decisions, real estate owners collude with government housing officials to guarantee a mortgage that is far above the real value of a property, and high government officials promise to "do what they can" for companies that have tax, anti-trust, or regulatory problems. These cases differ from those described above in that it is the institution itself that is victimized by its own employees and agents, not its clients or customers.

Third, the institutions can become offenders themselves. Or, somewhat more precisely, the institutions can motivate their representatives to take actions which serve the interests of the organizations (and may even have been implicitly or explicitly authorized by higher level officials), but are also in violation of criminal statutes. This situation has developed because we have decided to regulate the conduct of many of our institutions, and have relied (at least partly) on criminal sanctions to do so.

Now, part of our determination to regulate these institutions comes simply from a recognition that the institutions sometimes have interests that differ from those of the society at large. Hence, their pursuit of their interests may injure the rest of us. Among economic institutions, the pursuit of profits may lead to production processes that are more dangerous or dirty than they should be, or to efforts to fix prices substantially above levels to which they would be driven if free competition were allowed to

prevail. Among governmental institutions, an enforcement agency's interest in making cases, a regulatory agency's interest in reaching an accomodation with a powerful, regulated industry, or a political party's interest in retaining local power may lead to decisions and actions that inflect substantial losses on the rest of us. Part of our determination to regulate the institutions, then, arises from our desire to prevent the harm they might do if left to the unrestrained pursuit of their own interests.

A second part of our motivation to regulate the institutions, however, springs from a recognition that since these institutions incorporate and organize much of the society's activity, we have no choice but to turn to them when we want to accomplish large public purposes. Thus, to affect the supply of "suitable jobs" we pass minimum wage laws; to guarantee income to retired workers, we insist on minimum standards for pension plans; to guarantee equality of educational opportunity, we require the integration of public schools; and to reduce discrimination throughout the society, we mandate "affirmative action" plans. In all of these cases we are drawn to the regulation of major institutions not because of their capacity to do harm if left alone, but simply because they have the capacity to help us with broad social goals.

The motivation to regulate the conduct of large institutions does not always result in the passage of criminal statutes for non-compliance. We are apt to rely on the mechanisms of private civil suits, and regulatory agencies that set rules and enforce compliance through civil sanctions much more frequently than on criminal statutes and criminal prosecution. Still, in a surprising number of cases, we have been willing to establish criminal sanctions to buttress the mechanisms of civil suits and governmental regulatory action. As a result, major

officials, acting on behalf of large institutions (even with their explicit authorization) are exposed to criminal liability.

The net effect of all this is that we live in a society where the opportunity for individuals to commit white collar offenses have increased dramatically. Part of the increase reflects changes in the organization of society that hold real dangers of victimization. Part reflects an increase in our demand for government assistance in defending our interests. And part reflects an increased determination to control the behavior of large institutions that have significant potential for both good and ill. The combination leads to a potentially vast agenda for enforcement programs against White Collar offenses.

Arrayed against this vast agenda is a very small criminal justice system currently overwhelmed and pre-occupied by the problem of "street crime." Given the disappointments and frustrations in our efforts to deal with "street crime," one is tempted to counsel against asking the criminal justice system to take on any new burdens, particularly one as large and knotty as "White Collar Crime." But it is partly our current desperate efforts to deal with "street crime" that makes it seem important that we do something about White Collar Crime as well. It is clear that we fear "street crime." Moreover, in recent years we have become less sanguine about the prospects of dealing with this problem through the "rehabilitation" of offenders. Hence, we are increasingly inclined to "crack down" on muggers, armed robbers, rapists, murderers and burglars. The commitment to harshness in handling "street criminals" combines with our traditional ideologic commitment to "fairness" in the criminal justice system to make the issue of the criminal justice system's response to White Collar Crime of acute importance. We admit the possibility of significant "victimization" through methods and offenders that look much different than ordinary street offenses. In fact we have already

established criminal sanctions for some of the offenses. So "fairness" requires us to strike out at White Collar offenders as well as the street criminal. In fact, given the intensity of our attack on "street crime," there seems to be a special obligation to prosecute "respectable" people who use their position and reputation to steal through deception and exploitation. Until such attacks are visible, we worry about the fundamental fairness and rationality of the criminal justice system.

Thus, in my view, some rather fundamental symbolic and substantive issues are evoked by the concept of "White Collar Crime." We are as worried about stealing, hurting and frightening people when it is done through deception and exploitation by people who occupy institutional positions (or, indeed, by the institutions themselves), as when it is done by people who rely on assaults and stealth. In fact, we are particularly worried when these things are done on a wholesale basis by institutions that simply ignore the legal obligations that are supposed to restrain them. Moreover, throughout the entire area, we are concerned about "fairness" in the criminal justice system. We think it is outrageous that people with institutional positions would find it relatively easy to steal large sums of money with impunity. And we want to be reassured that we are as eager to prosecute powerful people who commit crimes for themselves. In my view, it is in terms of these broad issues that we must design and evaluate any national strategy to respond to the problem of White Collar Crime.

3. Distinct Components of the White Collar Crime Problem

Any reasonable person who has a vivid sense of the limited capabilities of the criminal justice system and who has followed the argument this far should, by now, be shaking his head with worry. Arrayed against the vast agenda of white collar offenses, the criminal justice system seems too small, too clumsy, and too fragile. It is inconceivable that the criminal justice system could deal with any substantial portion of the individual incidents of fraud, embezzlement, graft and abuses of authority that would occur in a society as large and complex and as wedded to the principle of "caveat emptor" as ours. Part of the problem is the sheer number of offenses that are likely to occur. But another part of the problem comes in the enormous expense of preparing cases of this type for prosecution.

Moreover, while we like to think that we are a government of laws and not men, and that the law stands above everything, one doesn't need too much experience with the actual operations of the criminal justice system to understand that the men who work that system face acute personal dilemmas and risks in attacking institutions that represent significant economic, governmental or political power. In enforcing environmental laws against a firm that threatens to close down if they are prosecuted, the criminal justice official feels that he is dealing with larger policy choices than he would like to be responsible for. Similarly, in attacking governmental and political institutions, the officials often feel they are attacking their peers, and that their own motives will inevitably be suspect. The blade of the criminal law is apt to simply shatter when it is brought against powerful political and economic institutions.

I am inclined to agree with this assessment and to worry that the criminal justice system has bitten off much more than it can chew in taking on the problem of White Collar Crime. But I would like to emphasize that we are already in this mess. We have already distributed criminal liability rather liberally among the activities and personnel of major social institutions. We have done so because we wanted to check the power we saw in those institutions and grasped the criminal law as one of society's mightiest weapons. But having done so, fairness forces us to enforce the laws. And we find that the actual resources of the criminal justice system make it seem more like a frail reed than a mighty whip.

So it is hard to decide to do nothing or go back to square one. We are compelled forward by the trends described above. In moving forward, however, we can already see that we will have to be guided by several major

on a front that is broad enough to capture the major substantive and symbolic concerns evoked by the concept of White Collar Crime, but narrow enough to be within the capabilities of the criminal justice system; organizing our response to the substantive problem in a way that invites assistance from institutions other than the criminal justice system; and generally protecting the criminal justice system from either a significant overload or obvious unfairness. In the end we are likely to discover that the criminal justice system plays a relatively minor role in a national strategy to control White Collar Crime, and that its role will be to punctuate or complement the actions of other institutions rather than the main offensive.

A useful start in thinking more operationally about a national strategy towards White Collar Crime is to divide the problem into several

distinct components. To be useful, the components should be defined in a way that allows us to make rough estimates about their relative importance, and to make some broad judgments about how the problem can be approached - how the criminal justice system's response could be organized and how much help will be forthcoming from actors outside the criminal justice system. Based on some reflection and discussion, it seems useful to divide the problem of White Collar Crime into seven major components. Table 1 describes the different components. Each component will be discussed in greater detail below.

3.1. "Stings and Swindles"

The first component can be described as the problem of "stings and swindles." This component involves stealing through deception by individuals (or "rings") who have no continuing institutional position, and whose major purpose from the outset was nothing more than to blik people out of their money. Now the "cons" and frauds that are included within this category vary in size and in targets. At one extreme is an offender who makes a few fraudulent door to door sales of pans, encyclopedias, or burial insurance. At another extreme are relatively sophisticated stock swindles where worthless or forged stock certificates are sold to large financial institutions. This category might even include large counterfeiting operations. What ties these varied offenses together is that individuals and institutions are tricked into giving up money to individuals who had no intention other than stealing, and who are likely to disappear once the deception occurs.

For purposes of gauging the relative seriousness of the problem and thinking of effective responses, it is useful to compare this kind of offense to burglary. The experience of victimization is likely to be similar. The losses will be primarily economic, rather than physical. And while the victim is apt to feel a little humiliated by the fact that he was deceived, he is not likely to have the same sensations of trespass and anxiety about the future that a victim of burglary would. In gauging the seriousness of any given offense like this, then, we are likely to look at the total amount that was stolen, the capacity of the victims to absorb the loss, and the relative innocence and frailness of the victim. We are likely to feel angrier about a man who bilks 10-20 elderly poor of \$500 a piece in a burial insurance fraud than a second man who sells fake stock certificates alleged to be "hot" to a shady stock broker for \$50,000. We would analyze the social costs of specific burglaries in about the same terms. While the social costs of these offenses in aggregate are not clear, I would be surprised if the problem of stings and swindles was more serious than that of burglary.

The analogy with burglary also helps in thinking about effective responses. A little reflection suggests that while we are fundamentally dependent on potential victims in preventing burglaries we will be even more dependent on self defense in preventing cons. After all, burglaries produce some signs that are visible to patrolling police. Cons do not. Hence, the victims will be much more on their own in defending against offenders. Once the offense has been committed, though, it may be easier to identify and prosecute the offender in a con game than in a burglary. The reason is simply that the victim is likely to have seen and come to know a little about the offender. The major obstacle to successful detection and prosecution may be nothing more than a limited jurisdiction which is easily escaped by the offender. Thus,

as in handling burglaries, an effective response to "stings and swindles" will depend a great deal on individual self-defense and the willingness of victims to submit complaints and assist in the investigation. The criminal justice role is likely to be deciding how serious a complaint is, and how much resources to devote to the investigation. There doesn't seem to be any opportunity for a more aggressive or pro-active enforcement strategy.

3.2. "Chiselling"

The second component of the problem is "chiselling:" i.e., giving a customer or client less than he has a right to expect on the basis of an institution's announced policies. This component resembles the offenses above in that it involves stealing (on an ad hoc basis) through deception. It differs from the category above in that the offenders are people who occupy continuing institutional positions, and the deception is not complete. In effect, somebody who expects to be in business for a while decides on an ad hoc basis to give only "half a loaf." Typical offenses are auto repair frauds, "short-weighting" in super markets and gas stations, or refusing to grant some privilege or provide some service that a client is entitled to in a government bureaucracy. The offender is usually an individual employee (or a relatively small unit of a much larger organization) who decides to cheat on his obligation to his customers, clients and firm by doing something that is contrary to his institution's policies, but saves him some trouble or earns him a small, non-organizationally provided, reward.

In aggregate, the victimization associated with these offenses can be quite large. For example, it has been estimated that the public loses more than \$20 billion in fraudulent auto repairs. But even so, the experience of the individual victims may not be all that serious. For the most part, their loss will be nothing but a relatively small economic loss. There will be few physical consequences. And the experience of humiliation and fear (with its lasting effects on one's general sense of security) may not occur at all. In fact, the victim may not even notice that he has been victimized. So, while economic losses to victims in offenses like this may be large in aggregate, the individual experience of victimization may be sufficiently different to make these offenses much less important than other kinds of offenses which inflict smaller aggregate losses, but do so by inflicting very large economic, physical and psychological losses on a few unsuspecting victims.

The fact that victims may not even notice they have been victimized creates a major problem in controlling the offenses. There is no one either to resist the offenses or to identify the offenders. (This is probably part of the reason that the aggregate losses can get so large.) Still, in trying to control offenses of this kind, the criminal justice system does have a crucial ally - the institutions themselves. To the extent that the institutions have policies which are important for them to follow (for either marketing or legal reasons), they will make enormous efforts to "police" their employees' conduct. In doing so, they will, of course, prevent some of the possible offenses in this category. Similarly, to the extent that trade associations and professional associations exist to protect the reputation of their particular service or industry, they might be enlisted in efforts to control "chiselling"

Of course, these associations have much smaller capacities to detect and deal with specific instances of chiselling, but it would be an error to ignore their possible contribution.

Since institutions and professional associations have some capacity to prevent chiselling, and since much of the chiselling that does occur will either go unnoticed (or be handled informally in complaints by clients and consumers to the institutions and associations), it is probably safe to say that only a tiny piece of this problem will ever end up in the lap of the government, and even less in the formal machinery of the criminal justice system. The government becomes involved primarily through two kinds of agencies: licensing boards that are designed to guarantee quality in the provision of certain kinds of services, and (more recently) consumer advocacy organizations which are often set up to receive and process complaints from consumers. Usually these agencies have only civil powers. The criminal justice system becomes involved only when these regulatory agencies want to press criminal cases, or where State Attorneys-General or local District Attorneys have set up aggressive consumer protection bureaus designed to make criminal cases against merchants who "bilk the public."

If one wanted to increase the level of government effort in this area, the right strategy would probably involve some combination of:

- 1) increasing the volume of complaints made to the government by widely advertising the rights of consumers in and establishing a convenient procedure for lodging the complaint; and
- 2) some pro-active investigations of firms, bureaus or industries that seem to generate a large volume of complaints. In setting up such a system, however, the government would, in fact, be going after institutions that systematically violated clear obligations rather than going after the occasional, ad hoc chiseller. Ad hoc chiselling

as defined in this section is probably beyond the reach of anyone but the institutions who employ the chisellers.

3.3. Individual Abuses of Institutional Position

A third component of the White Collar Crime problem involves an individual exploiting the power of an institutional position that confers control over valued privileges or resources to take advantage of another individual who has a strong interest in how that power gets used. Typical offenses might include a contracting or hiring official in government or industry extorting a kickback from a contractor or potential employee for a favorable contracting or hiring decision, or a fire inspector extorting a payment from the owner of a building to give him his license.

In actual cases, it may be difficult to distinguish these abuses of institutional power from "bribery" which is discussed below. Analytically, however, the difference is quite clear. In offenses involving "abuses of institutional position" the victim has a clear right to something the official controls, and the official asks for an additional payment to make the proper decision. The individual confronting the institution is the victim. The representative of the institution is the offender. In cases involving "bribery," the situation is reversed. The individual confronting the institutional representative would not ordinarily be entitled to favorable treatment. In this situation it is the organization that is the victim. Both the representative and the outsider profit from the offense.

Note that the experience of victimization is likely to be much different for "abuses of institutional position" than for other offenses we have discussed so far. The reason is simply that power rather than

deception is the vehicle used to victimize. An individual with significant power confronts another individual with less power and forces him to accept less (or pay more) than he has a right to expect. Because power is being used, the experience of victims is likely to be quite different. They can involve physical abuse and humiliation as well as economic losses. Moreover, it is likely that the long term effects on the victim's sense of security will be more devastating. Encountering power that is ruthlessly used to exploit a victim is a much different experience than simply being tricked or deceived.

In thinking about an effective response to such offenses, one sees quickly that these offenses may be much easier to handle than "chiselling." We have the same important ally - namely the institutions themselves who are likely to have some interest and capability for detecting and punishing such offenses themselves. In addition, we are likely to get more help from victims who are more likely to notice that they have been victimized and to be indignant about their victimization. As a result, many of these cases will be handled administratively within the organizations whose representatives have exploited their position. The general strategy to improve enforcement against such offenses would resemble the strategy against "chiselling:" 1) widespread advertising of rights and the establishment of a convenient complaint procedure; and 2) some proactive undercover operations by criminal justice agencies in areas where one expects to see a great deal of "official extortion."

Note, finally, that it is likely that most of these offenses will be committed in the governmental sector. The government is generally in the business of distributing subsidies, privileges and burdens to individuals

in the society as a matter of right. Moreover, the government officials typically act in situations where explicit rules are supposed to define fully the nature of the transaction, but where there is, in fact, an enormous amount of de-facto discretion. In the sheer magnitude of the government enterprise, and in the tension between the expectation that the transactions should proceed according to explicit rules and the actual experience of their subjective nature, there are vast opportunities for "victimization" by officials. Thus, while there may be contracting and hiring abuses in both government and private sectors, probably the largest number of these offenses involving abuses of institutional position will occur within governmental institutions.

3.4. Embezzlement and Employee Fraud

A fourth component of the White Collar Crime problem can be called "embezzlement and employee fraud." This component introduces an interesting new relationship among offenders, victims and institutions. So far in examining offenses committed by people with institutional positions, we have looked at their capacity to victimize individuals outside the institution - i.e., consumers, clients and suppliers. Starting with this component of the White Collar Crime problem, we will be interested in a second possibility; that individuals in institutional positions can victimize their own institutions rather than its clients, consumers, or suppliers. Embezzlement is the paradigmatic offense: an individual within an institution exploits his control over the assets of an organization to steal them for himself. It resembles "pilfering" except that the mechanism is deception rather than trespass.

There is a significant conceptual problem in trying to calibrate the seriousness of these offenses, and the magnitude of the "victimization." It is clear, of course, that large amounts of money can be stolen by embezzlers, and people who pad payrolls. But who is the victim in these offenses? The answer seems to be the organization itself. Of course there are individual victims in the form of clients, owners and managers of the organizations. But the losses will be distributed among a large number of such individuals. Moreover, these individuals may never discover that they have been victimized. In effect, the organization serves to diffuse and disguise the losses. In my view, the fact that the losses are distributed over large numbers of individuals and well disguised does mitigate the seriousness of the offense. We care less about an offense that distributes \$1,000 in losses among 1,000 relatively well-to-do organizational clients than a different offense that inflicts a \$1,000 loss on a single person with limited means. In effect, since the "victimization" here only involves money, is distributed among a large enough group to make the economic loss to each quite small, and neither humiliates nor frightens the victims, these offenses may not merit a great deal of social concern.

I suspect that our real stakes in this area are concerned more with the symbolic issue of equity rather than the substantive problem of victimization. It seems outrageously unfair that the opportunities to steal efficiently should be as unequally distributed as everything else in the society. It seems wrong that people in privileged positions should be able to steal thousands of dollars with a stroke of a pen that distributes these losses over large numbers of unseeing, uncaring people while a person with a less advantaged position must rely on the much less efficient procedure of going from individual to individual and either sneaking their property away or threatening them physically. Since it seems so unfair, we should show some zeal

in attacking these offenses even though the substantive stakes associated with victimization are not all that significant.

Moreover, in thinking about effective methods of control and the role of the criminal justice system, it becomes apparent that the criminal justice system may not have to play a very large role. On the one hand, we realize that it is virtually impossible for the criminal justice system to detect these offenses. The vast area in which these offenses could occur, and the difficulty of seeing the offense in the enormous volume of transactions recorded by an institution, make it hopeless for the criminal justice system to "patrol" for these offenses. On the other hand, we realize that the institutions themselves have both a strong interest and a capability in preventing and detecting the offenses themselves. After all, the problem of employee theft is an old one, and accounting has become a very sophisticated mechanism in response. It is likely, then, that our ability to control these kinds of offenses will depend almost entirely on the strength of the internal control mechanisms of the institutions themselves: organizations with strong internal controls will rarely be victimized; those with weaker controls will suffer often.

This simple observation about what kinds of institutions will be victimized may imply that government agencies will be usually vulnerable. They handle large amounts of money and for the most part, have relatively weak accounting and auditing procedures. Thus, the development of stronger accounting and auditing procedures within governmental institutions should probably be a high priority matter in dealing with this component of the White Collar Crime Problem. (It is for this reason that current legislation creating new offices of Inspector Generals in various federal departments should probably be approved.)

Note that our dependence on the interests and capabilities of the organizations themselves to deter and identify these kinds of white collar crimes is not necessarily bad in terms of our substantive objectives.

The organizations may do an excellent job of controlling these kinds of offenses. It may be bad, however, with respect to our symbolic objectives. The reason is simply that the victimized organizations may prefer to deal with the offenses privately and discreetly. This would be true if the organization wished to avoid punishing a valued colleague too harshly, or if it would prove embarrassing to the organization to reveal its vulnerability. Regardless of the motives, however, if victimized organizations deal with offenders through firing, demotions or other economic and personal humiliations, the criminal justice system is cheated of its opportunity to show its willingness to punish such offenders in ways that are similar to our punishment of street criminals.

Thus, to reassure ourselves that our criminal justice system is prepared to punish people who use powerful organizational positions to steal as well as people who use force or stealth, we must find some way of dealing with the kinds of white collar offenses that involve the victimization of organizations (and indirectly, their clients, owners, contributors, employees or subjects) by people who occupy significant positions within them. Our ability to cope substantively with offenses of this type is particularly dependent on the internal control systems of the governmental and economic organizations of our society. Our ability to cope symbolically with these offenses will depend on the willingness of the organizations to turn some of the cases they discover over to the criminal justice system for prosecution. It is very difficult for the criminal justice system itself to take any initiative in this area.

3.5. "Client Frauds"

A fifth component of the White Collar Crime problem involves stealing by economic clients of organizations that at least in some sense advance credit to their clients. Included in this component of the problem could be credit card fraud, insurance fraud, fraud by individual clients of welfare and medicare programs, and tax evasion. These offenses belong together in that they involve an organization that distributes liabilities over its resources to a large number of individual clients or debtors who may take advantage of their control over that liability to steal resources from the institution.

This component of the problem turns out to be a close analogue to the problem of embezzlement and employee theft. There is the same difficulty in identifying who has been victimized and the same sense that the victimization is not so serious. Moreover, one is tempted to conclude that the major portion of the responsibility for controlling these offenses ought to lie with the institutions themselves. Their business involves distributing their resources and credit to individual clients. If they are vulnerable to client fraud, they are not performing their fundamental tasks effectively. Hence, they shouldn't be able to rely on the criminal justice system to do a major part of their job. Finally, it is likely that if we should use criminal justice resources anywhere in this system, we should begin with protecting public and governmental institutions. In fact it is likely that tax evasion is overwhelmingly the most important offense in this area of White Collar Crime. So, the analysis of employee fraud is almost exactly duplicated for the problem of "client fraud."

3.6. "Influence Peddling/Bribery"

A sixth component of the White Collar Crime problem involves individuals with institutional positions selling their power, influence and information to outsiders who have an interest in influencing or predicting the activities of the institution. Paradigm offenses here include kickbacks from contracts, SEC officials who sell information about planned SEC actions, and so forth. In offenses like these, it is the organization that is victimized because its internal processes (which are presumably designed to allow it to perform its functions effectively and efficiently) are sabotaged by its own employees for their own interests. Unlike the case of embezzlement, it is not so much the institution's assets that are stolen, as its capacity to operate efficiently and fairly.

The victims of offenses of this type are the people who were competing with the interests that managed to achieve "undue influence" through their use of "bribery." It is less aggressive contractors who failed to buy off the contracting official, or less aggressive lobbyists who were reluctant to pay crooked congressmen. Chances are, these people may suspect they have been victimized, but be unable to produce any evidence. In fact, these offenses will probably be extremely difficult to root out because no one who participates in the offense will have any incentive to come forward. Both the bribe and the bribe receiver like things the way they are. Consequently, our response will depend crucially on the institutions themselves, perhaps aided on occasion by competitors who suspect they were victimized and an aggressive investigative press that thrives on stories of scandal. Were all these to act together, the criminal justice system might have an opportunity to intervene.

Note that these offenses are likely to be most serious where they occur within governmental institutions. The reasons are both substantive and symbolic. Where the government makes policy decisions governing the use of its enormous resources and authority to accomplish public purposes, a great many people are affected. Losses and gains in individual well being are registered throughout the society. For those who lose (and sometimes even those who win) it is crucial to their sense of well being that they believe that these decisions were made fairly and equitably. When these processes are manipulated by corrupt practice such as influence peddling and bribery, it is likely that our citizens will suffer unnecessary substantive losses, and that their faith in the fairness at our governmental system will be eroded.

3.7. Willful Non-Compliance With Rules Regulating the Conduct of Economic, Political and Governmental Institutions

The last component of the White Collar Crime is probably the most challenging. It involves situations where powerful institutions (or individuals acting on behalf of powerful institutions) willfully violate laws that are designed either to keep the institutions from doing social harm, or to require them to do social good.

This area, too, is potentially vast. We now have a great many laws designed to guarantee the ultimate benignity of our economic, political and governmental processes. For example, in the economic arena we have laws to promote competition, to require various products to meet rigorous standards of safety and efficacy, to restrain false advertising, to obligate firms to use safe and clean production processes, and so on. In the political arena we have laws regulating the registration of voters, the accessibility of candidates to the media, the use of public employees

in politics, and the financing of political campaigns. In the governmental arena, we have laws designed to assure widespread participation in major public policy decisions (e.g. the Administrative Procedures Act and the Freedom of Information Act), to protect the privacy of individual citizens, and to prevent obvious conflicts of interest among governmental officials. Moreover, cutting across both governmental and economic institutions, we have laws designed to achieve broad social purposes such as those that mandate minimum wages, insist on non-discrimination in hiring and selling, and protect long term pension rights of employees. While most of the enforcement activity under these laws occurs through regulatory agencies relying on civil procedures, many of the laws do impose criminal sanctions for some kinds of violations.

The number and variety of these laws make it difficult to say much in general about the magnitude and character of the "victimization" that occurs as a result of criminal violations of these statutes. Clearly, there is a lot to be concerned about in this area of White Collar Crime. Price-fixing is alleged to cost the consumer billions of dollars each year. Negligence in the production of lawnmowers, drugs, canned foods, cars and airplanes, or willful disregard of environmental laws can result in substantial physical harm. And civil rights violations have struck at the very heart of our freedom, personal dignity and sense of security.

Moreover, a special kind of terror is associated with being abused and victimized by a large institution. One may find himself surrounded by others who are also victimized, and peer into a future where no one comes to the rescue and the institution continues its abuse indefinitely. In fact, the influence of the institution may become so pervasive and persistent that one ceases to experience his losses as "victimization" and accepts them

as an unfortunate but inevitable feature of the world. Of course, things don't often get this bad. But when they do, the experience of the "victimization" is very severe. (Ironically, the experience may be so severe that it will be difficult to find anyone who will complain).

Larded among spectacular offenses committed by negligent, clumsy or willfully malevolent institutions, however, are a great many offenses that are less spectacular. The losses occur on a smaller scale with fewer portenses for the future. For these offenses, our stakes are likely to be more symbolic than substantive. Our symbolic stakes in these relatively insignificant cases arise from three different sources. One source is simply our desire to show our determination to regulate institutions in the areas in which we have passed criminal statutes. We want to show that we were serious in imposing the new obligations and that the society as the will and the capacity to control its various institutions. A second source is indignation about the bad moral character of leaders of institutions who authorize cheating on their clearly mandated social responsibilities. We simply hate to believe that we are led and organized by people who will not accept their broad social responsibilities. A third source is a desire to reassure ourselves about the fairness of the criminal justice system. We want violations of criminal statutes to be punished regardless of the status of the offender or the seriousness of the offense. For all of these reasons, we may sometimes want criminal prosecutions even in relatively trivial offenses.

In organizing a response to willful (or negligent) violations of socially mandated responsibilities, the criminal justice system is again likely to play only a minor role. Much of the effective control over these offenses will depend on "voluntary compliance" by the affected

institutions, and regulatory efforts managed largely through non-criminal investigations, and sanctions. These mechanisms will act on a much larger scale than the criminal justice system could ever hope to. In fact, the criminal justice system will find it difficult both to identify offenses and offenders in this area.

The offenses may be relatively invisible for the same reason that embezzlement and client fraud are hard to see. The organization distributes the losses over a large enough group of individuals so that no individual has a strong incentive to complain. Even if individuals notice that they have been victimized, they may weigh the strength of their individual complaint against the power of the institution and quickly decide that it isn't worth it to complain. In fact, this situation is worse than the case of embezzlement and client fraud because in those cases we could at least rely on the institution itself to help us do the policing. In this case, the organization is no longer the victim, but the offender! So it has no incentive to help us locate the offenses. The only actor in a position to help the criminal justice system identify offenses are the regulatory agencies who will occasionally encounter criminal misconduct in the course of their investigations. Given historically difficult relationships between regulatory agencies and criminal justice agencies, and given the general reluctance of regulatory agencies to threaten carefully nurtured relations with the regulated industries by referring cases for criminal prosecution, however, the regulatory agencies are unlikely to provide a great many cases to the criminal justice system.

The offenders are likely to be relatively invisible because it will ordinarily be unclear who within the organization is responsible for the violations. Who, after all, are the guilty individuals if an organization's policy is to violate the laws? How will we know when officers of

the organization were merely following explicit or implicit orders from supervisors, and when they are assuming responsibility for their actions themselves? These problems are central to cases such as the price fixing case in the electrical industry, the "black-bag" cases now being prosecuted within the FBI, and even the war trials at Nuremburg. The fact of the matter is that we do not now have a sensible, widely understood, easily applied rule that distributes legal and moral responsibility for organizationally sanctioned or motivated action among individuals within the organization. Without such rules, it is as hard to locate the offender as offenses in this area of white collar crime.

Thus, this last component of white collar crime presents some of the knottiest problems in the entire area. I suspect that our substantive and symbolic stakes are greater in this area than in any other component of white collar crime. The material and psychological losses to victims are significant when viewed on both individual and aggregate terms. Moreover, these losses occur against the backdrop of a widespread social concern about our ability to control the behavior of large institutions. We have tried to indicate our determination in this area by establishing criminal sanctions and lashing out at leaders of institutions who violated those statutes. Unfortunately, our actions in this area may come to be seen as capricious partly because it is difficult to detect the offenses; partly because trivial, technical offenses are included among the more serious; and partly because it is difficult to assign guilt to individuals. I suspect progress in designing policy to deal with this component of white collar crime depends on: 1) deciding which few among the rapidly proliferating regulatory programs involve the most important social concerns; 2) figuring out how the regulatory processes should be co-ordinated with

the criminal processes to maximize our ability to guide institutions in the regulated area; and 3) developing a reasonable principle for assigning guilt to individuals in cases where we go to criminal prosecution. Despite the importance of this component of White Collar Crime, no one appears to be working on this agenda.

4.0. Conclusion: Some Policy Guidelines in Designing a Strategy Towards White Collar Crime

This broad survey of the social concerns and diverse problems associated with the idea of White Collar Crime is far from sufficient to support the detailed design of a national strategy towards White Collar Crime. Still, a few strategic principles emerge.

One principle is that we should understand that we have both substantive and symbolic objectives in this area. The substantive objectives involve reducing the "victimization" associated with White Collar offenses. We want to reduce the number of people who are injured, frightened or lose money as a result of deception and exploitation or a superior bargaining position. The symbolic objectives involve reassuring ourselves about the "fairness" and consistency of the criminal justice system. We want to see evidence that the criminal justice will treat deception and abuses of institutional position as harshly as stealth and physical attack, and that it is willing to punish privileged and powerful offenders as well as those who are relatively powerless. To some extent, of course, the concept of deterrence relates the two different kinds of objectives: cases prosecuted largely for symbolic purposes may produce real substantive results. Analytically, however, the two objectives are distinct. A relatively greater commitment to one objective or the other would shift our White Collar Crime strategy significantly. A commitment to substantive objectives would focus

our attention on individual abuses of institutional positions, and major offenses involving willful institutional non-compliance with socially established obligations. A commitment to symbolic objectives might leave more room for efforts directed against embezzlement and employee fraud. Thus, the two different kinds of concerns can powerfully influence the focus of a national strategy towards White Collar Crime.

The distinction between the two different kinds of objectives is important not only because it raises the crucial issue of which offenses are relatively more important to attack, but also because it raises a second crucial issue in the design of a national strategy: namely, a calculation about the appropriate division of labor between the criminal justice system and all other mechanisms of social control in coping with white collar offenses. To the extent we want to achieve substantive results, we may want to keep as much responsibility for the control of white collar offenses within larger and less formal mechanisms of control rather than in the criminal justice system. To the extent we want to achieve symbolic goals, we will be tempted to bring some portion of these cases into the criminal justice system. Figuring out a suitable number of cases to handle in the criminal justice system that is large enough to achieve symbolic and deterrence objectives, and small enough to guarantee that other agencies and systems continue to feel responsible for substantive control is a key part of our policy design problem. My hunch is that the right number of cases will be a very small number of cases in the criminal justice system. Given the vastness of the area, and the comparative advantage of other institutions in detecting and controlling the offenses, the interest of the criminal justice system may turn out to be almost entirely symbolic.

A third principle that emerges from the analysis is that exploitation of a superior bargaining position is as important a mechanism of White Collar Crime as deception. The experience of victimization is likely to be extremely unpleasant. Moreover, the mechanism seems to be at the heart of many of the resentments and fears we have about people who exploit an institutional position to injure us. Finally, I would expect this problem to grow as the society becomes increasingly organized and regulated. For all these reasons, I would urge that we pay attention to exploitation as well as deception.

A fourth principle developed in the discussion above is that governmental and political institutions are scarcely immune from white collar offenses. They clearly are vulnerable embezzlement, employee fraud and client fraud just as private economic institutions are. And, in the crucial areas of individual abuses of authority, bribery, and willful, institutional non-compliance, the problems within governmental institutions are likely to be particularly significant. At a substantive level, then, governmental and political institutions house a major part of the problem.

At a symbolic level, I think offenses within governmental and political institutions are even more important. The government has always had a slightly different moral status than private enterprise. We give it this status because we want the officials and institutions to feel more than ordinarily responsible. After all, they are dealing in two very abuseable commodities -- power and other peoples' hard-earned money. Hence, we insist on higher standards and ought to be more concerned when fraud, theft and extortion appear in governmental processes, than when they appear in economic processes. Moreover, it is more than a little hypocritical for government agencies to attack private economic institutions for offenses that they ignore when they occur in governmental agencies. In

sum, far from being outside the scope of White Collar Crime, offenses committed with governmental and political institutions are at the very core of the problem.

A fifth "principle" (more in the nature of a worry than an established "principle") is that our current planning efforts and organizational development efforts may be targeted on the wrong piece of the problem. Our current efforts in this area are designed primarily to deal with fraud and embezzlement in both private and governmental sectors. I am worried that we will work hard in this area and ignore what appear to me to be the crucial problems of abuses of institutional position, bribery, and institutional non-compliance with social obligations. If I am right about the relative importance of these offenses in the general area of White Collar Crime, it seems crucial to me that we begin thinking about the problem of criminal enforcement of existing social regulations as well as fraud and embezzlement. It is in this area that I think the most important programmatic challenges to a White Collar Crime strategy lie.