WHITE COLLAR CRIMES AND CRIMINALS*

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The commission of wrongs through fraud as well as through force is as old as human society. Although the concept of white collar crime did not come into use in our own society until Sutherland¹ coined it some fifty years ago, sociologists in the early twentieth century recognized a type of criminal who "picks pockets with a railway rebate, . . . cheats with a company prospectus instead of a deck of cards, or scuttles his town instead of his ship. . . ."² Thus, Americans' current attention to white collar crime—either in its garden variety forms or in the more special forms associated with the abuse of political power in the nation's capital, or abuse of financial power in the nation's largest city—is a return to long-standing problems and issues in our society.

In this Article, we develop some central themes that emerge from our inquiry into the nature of those convicted of a selected set of federal white collar offenses. How different is white collar crime from "common" crime, either in the nature of the offense or the offender? Is it reasonable to speak, as the concept implies, of a unitary phenomenon of white collar crime, or does the concept itself conceal a variety of different types? Given the extraordinary range of definitions of white collar illegality, which dimensions of white collar crime should we regard as most salient? Is it, for example, something about the nature of the offender, such as is implied by his white collar status? Or is it something about the position his background allows him to occupy? Or must we see the offender as inescapably bound to the offense, as the dancer to the dance?

We provide tentative answers to these questions, not by theory or conceptualization, but through the close examination of a special body of data gathered on convicted federal offenders. We believe these data to be especially valuable as a descriptive resource and as an aid in developing more refined ideas about white collar crime. We have pursued some of these issues in other publications, both

* This study is part of a larger program of research on white-collar crime supported by Grant #78-NI-AX-0017 from the National Institute of Justice, United States Department of Justice. Opinions in this document are those of the authors, and do not necessarily reflect the official position or policies of the Department of Justice.

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2. E.A. ROSS, SIN AND SOCIETY 7 (1907).
past and in process, but in this Article we will focus specifically on the descriptive questions raised above. As any investigator knows, the answers obtained depend in important part on what crimes and what offenders we select for study. We begin, therefore, with an extended discussion of the sample of offenders and offenses that form the basis for our study and of the data available to us about them.

I. THE STUDY DESIGN

The evolution of the concept of white collar crime has been marked by changes in meaning that often preserve rather than reduce fundamental ambiguities. To some, the term still denotes crimes committed by individuals of high status. To others, it refers to illegal actions by organizations or by persons in certain occupations. Some observers concentrate on the nature of the offense, others on its consequences. We sought to develop a sample of white collar offenders broad enough to allow us to explore critically each of these underlying themes in the study of white collar crime.

Our practical problem was to identify convicted offenders who had been prosecuted for crimes that would be identified by most scholars and laypersons as fitting within a broad definition of white collar crime. With this in mind, we selected eight specific statutory offenses for our study that we believed would be included in almost every major conceptualization of white collar criminal conduct. The most obvious choices were those that virtually anyone would regard as quintessential white collar crimes. Criminal violations of securities and antitrust laws certainly fall within this category. The Securities Exchange Act declares it "unlawful to use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance." The


5. We selected these from the hundreds of sections of the United States Code. The vast majority of offenses were eliminated from consideration on facial inspection. These include various forms of homicide, robbery, assault, burglary, auto theft, and sex offenses. We also ruled out those statutes primarily designed to control organized crime, such as, the Hobbs Act and RICO. We did not include categories which are mainly political, although many of these offenses also have an economic dimension, such as nationality laws, immigration laws, civil rights statutes, the Selective Service Act and other acts designed to protect national defense. Finally, we eliminated a number of miscellaneous categories with crimes of white collar character since the conduct itself was rare or exotic and the nature of the acts were mixed at best. This category included specific statutes governing the importation of injurious animals and birds, the transportation of strike breakers, and other maritime and shipping offenses.

6. 15 U.S.C. § 77 (1982). Provisions of the Securities Act of 1933 forbid those offering or selling securities through interstate commerce or the mail from using "any device, scheme, or artifice to defraud" or engaging in practices that would operate as fraud or deceit upon the stock purchaser. Id.
Sherman Antitrust Act prohibits businessmen and women from conspiring to fix and control the prices for goods and materials in the marketplace.\(^7\)

Collusive activity is also found in another of our offenses: bribery. The principal bribery statute proscribes giving, offering, or promising to give anything of value with the intent to influence a public official.\(^8\) Bribery cases thus include a number of elements associated with white collar crime, including the abuse of public trust.

A fourth offense that is generally described as a white collar crime is bank embezzlement. The federal bank embezzlement statute involves people, such as officers, directors, agents or employees who commit a crime against the banks that employ them.\(^9\) Both the special occupation and the abuse of financial trust clearly put bank embezzlement in the white collar crime category.

Of all federal crime categories that identify white collar offenses, our fifth section, mail fraud, covers the widest range of wrongs. The mail fraud statute\(^10\) may be used to prosecute any crime in which the postal service or other federally regulated communication system is used to defraud individuals or organizations. Since many of the most important financial transactions require the use of the mail or wire communications, almost any fraudulent transaction can become a case of mail fraud.

In addition to these five statutory categories, we examined three other violations of federal law which involve fraud or misrepresentation: tax fraud, false claims and statements, and credit fraud. The Internal Revenue Code is one of the most broadly applicable criminal statutes since every income-earning person is subject to its provisions, as is every organization that withholds taxes for its employees.\(^11\) Because people in the highest income brackets have the most to gain from tax fraud, such offenses are often thought of as especially frequent in the white collar and professional population. Thus, this offense also captures elements of high status that are central to many definitions of white collar crime.

As federal programs have expanded over a wide range of activities, the federal government has become the source of financing for an extraordinary variety of purposes. This has led to the use of government programs as the locus for the commission of financial fraud. As a result, many sections of the federal criminal code, particularly sections concerning false claims upon or against the United States, or departments or agencies thereof, and the making of false, fic-

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titious or fraudulent statements, are employed to address these crimes.\textsuperscript{12} Typically, cases arising under these statutes involve offenders who lie to the government to obtain unwarranted disbursements or reimbursements. The most frequent victims are large government agencies like the Department of Housing and Urban Development, the Veterans Administration, and the Social Security Administration. Offenses may involve individuals acting on their own or on behalf of organizations. Patterns include professionals using Medicaid programs, individuals defrauding mortgage insurance programs, and many cases of fraudulent misrepresentation.

Our final category is credit or lending institution fraud: knowingly making a false statement on loan and credit applications to financial institutions.\textsuperscript{13} In this society that runs on credit, it seems natural that fraudulent application for loans from federally insured banks figures importantly as a form of nonviolent economic crime. Like false claims and statements, these crimes involve fraudulent submissions to organizations. Those prosecuted for credit and lending institution violations are usually either individual applicants or organizations designed for fraud. In a pattern again similar to the false claims and statements cases, these offenders may work through insiders (bank or agency employees) who knowingly process and approve false or fraudulent applications.

These eight crime categories—securities fraud, antitrust violations, bribery, tax offenses, bank embezzlement, postal and wire fraud, false claims and statements, and credit and lending institution fraud—comprise our selection of white collar crimes. We make no claim that they are representative of the total body of white collar crime. However, we are convinced, within the limits to be discussed, that these eight categories provide a broad and heterogeneous view of the white collar criminal activity that is prosecuted in the federal judiciary.

How well have we distinguished presumptive white collar from “common crime” cases? From one point of view, all the categories fit at least one definition of white collar crime. But with the possible exception of securities and antitrust cases, it would be dangerous to infer the “white collarness” of an offense from its statutory category alone. We think our selection produces a sample that is high in its “yield” of true white collar cases, though it is by no means pure in that respect. But were we really successful in that endeavor? The only way to tell is to compare our sample with the closest we can come to a sample of nonviolent economic offenses of the non-white collar, or what we call the common crime type. Our effort to do so is complicated by the nature of federal crime. Most common crimes, such as the ordinary burglaries, larcenies, and other offenses that make up the bulk of felony criminal activity in the United States, are governed by state rather than federal law. For example, prop-

\textsuperscript{12} See, e.g., 18 U.S.C. § 287 (Supp. IV 1986) (imposes imprisonment and fines for mailing false, fictitious or fraudulent claims against United States or agency or department thereof); 18 U.S.C. § 1001 (1982) (criminal sanctions for knowingly and willfully falsifying, devising or mailing false, fictitious or fraudulent statements or representations in any matter within jurisdiction of a U.S. department or agency).

\textsuperscript{13} 18 U.S.C. § 1014 (1982).
Property theft is a federal crime only if federal property is stolen. The very traits that make the federal system an ideal hunting ground for white collar crime make it a difficult place to locate a sample of traditional common crime defendants.\textsuperscript{14}

For the purpose of comparison we wanted a nonviolent, financially oriented property crime that was likely to be general and frequent enough to be spread throughout the federal districts. Further, the probability must be low that the crime’s offenders were of white collar social status. Our solution was to choose two related forms of theft—postal theft and postal forgery. Postal theft cases are primarily thefts of government-issued checks for welfare or social security benefits. The thefts are often from mail boxes, on the day the checks arrive. The primary distinction between postal theft and postal forgery is simply whether the defendant is caught at the time of the theft or when he or she tries to cash the check by forging the endorsement of the recipient. Both offenses are very common within the federal system.\textsuperscript{15}

The specific information about these white collar and common crime offenders is drawn from presentence investigation reports ("PSI’s") made out on almost all federal offenders by probation officers to assist judges in making sentencing decisions.\textsuperscript{16} Varying in length, from as few as three to as many as twenty pages, PSI’s describe the offense of which the defendant was convicted, usually in the words of both the defendant and the prosecutor. PSI’s include essential material on the background of the case, a detailed description of the defendant’s educational, medical, employment, family, and criminal histories, and an overall evaluative summary by the probation officer suggesting a particular sentence. It was the availability of these presentence investigation reports, not normally accessible to researchers, that shaped this exploration of the phenomenon of white collar crime.

Like other matters of systematic criminal record keeping, the presentence investigation reports are routinely made out for those who pass a certain threshold in the criminal justice system: conviction in a federal court. Unlike the "face-sheet" reports that are the basis of most empirical studies, PSI’s are

\textsuperscript{14} We considered theft of United States property as a common crime control category, for example, but found that nearly two thirds of the cases so prosecuted in our seven districts came from the Central District of California (Los Angeles). These cases presumably involved theft from military and veterans institutions in the area and seemed likely to be an unrepresentative sample of common crime cases. Similarly, we considered theft in interstate commerce, but those offenses seemed to be connected with organized crime.

\textsuperscript{15} Although the two cases are similar, and distinctly common crime types of cases, there are small but systematic differences between them in the direction one might expect. The forgery offenders are slightly less likely to be unemployed and to have a prior criminal record and are generally more educated. This is not surprising, since forgery has a rudimentary element of fraud and misrepresentation that is lacking in garden variety thefts. In any event, differences between our common crime sample and our white collar crime sample would be even greater if the common crime sample consisted solely of postal theft cases.

\textsuperscript{16} There are exceptions, such as when the judge may accept a defendant’s very infrequent request that the PSI not be completed.
based on hours of collection of detailed information from the prosecution, the
defendant, and, often, from social agencies. The narrative accounts of offenses
are sometimes as brief as a sentence or two, but they often run to two or three
pages of rich detail on the underlying conduct. Even the routine material on the
defendant goes beneath the surface in its description of employment history,
family background, and prior criminal record. PSI's also allow a unique glimpse
into an offender's view of the offense and the effects of being processed as a
defendant. Taken together, these materials provide an analysis of the individuals
and their crimes that approximates the richness of some case studies, but that
can be carried out for the vast majority of convicted defendants.17

We drew our sample of offenders from seven judicial districts during fiscal
years 1976, 1977 and 1978.18 The districts were chosen in part to provide geo-
graphic diversity. The areas were also selected because they were being examined
in other studies and were known to have a substantial number of white collar
cases. The districts (and their central cities) are: Central California (Los An-
geles), Northern Georgia (Atlanta), Northern Illinois (Chicago), Maryland (Balti-
more), Southern New York (Manhattan and The Bronx), Northern Texas
(Dallas), and Western Washington (Seattle).

To allow a detailed analysis of each presentence investigation report, as well
as to avoid having one or two offenses dominate our study, we chose to exam-
ine a random sample of thirty cases for each offense category in each of the
seven districts. Because securities fraud and antitrust cases have generated so
much scholarly interest and public concern (and they occur so infrequently in
individual districts), we studied all offenders convicted of these two crimes in all
of the federal districts during the three fiscal years we examined. The resulting
sample thus contains more antitrust and securities fraud offenders, and fewer
postal fraud, IRS fraud and bank embezzlement offenders, than would a ran-
dom sample. But it offers a broad sampling of white collar defendants con-
victed in the federal courts. Our common crime control sample consists of thirty
cases for each of our seven districts, fifteen each of postal theft and postal
forgery.

We think the sample of cases resulting from these procedures is appropriate
for the investigation of white collar illegality, but we want to point to some
specific characteristics of the sample which might be viewed as deficient. First,
not all federal white collar crimes were included. Perjury, bankruptcy fraud and
conspiracy are three offenses that arguably might have been included in our

17. Our access to federal PSI's was facilitated by a congressional request for more information
about the sentencing of white collar offenders. We are indebted to Don Chambers and his staff at
the Federal Probation Office for their assistance and cooperation. Access to PSI's are granted
only under conditions of extraordinary confidentiality. See Wheeler, Weisburd & Bode, supra note
3 (for further details about coding of PSI's and other questions of method).
18. The sample was selected from data maintained by the Administrative Office of the United
States Courts. The data contains all defendants convicted in the federal courts and their corre-
sponding offense classification. We wish to thank Mr. James A. McCafferty, Chief of the Statisti-
cal Analysis and Reports Division, Criminal Section, for providing the necessary data.
study. Conspiracy does, in fact, appear, since it often accompanies the charge for a specific substantive offense.

Another group of omitted offenses includes violations of civil or administrative regulations that are often thought of as white collar offenses. These include many environmental offenses, where felony prosecutions were rare at the time we gathered our data, but are more frequent now. Another limitation of our study is that it examines the crimes of individuals rather than of organizations. As with conspiracy, there are many instances in our sample in which organizations as well as persons are charged, but our focus here is limited to individual defendants.

Finally, our analysis is limited to convicted defendants. The problem is hardly a new one for analysts of crime. We are convinced that much of what we have learned about convicted defendants will apply as well to those who are indicted but not convicted and perhaps to a lesser degree to violators who are never apprehended. One of the companion studies in our program of research on white collar crime gives us some reassurance in this regard. Kenneth Mann, who studied white collar crime defense, feels that the principal difference between those who are convicted and those who are not lies mainly in the vagaries of the evidential traces that are left behind, rather than in the underlying patterns of fraud or collusion that constitute the offense in question. In any event, we remain convinced that a great deal can be learned about the nature of white collar crime from a close analysis of this sample.

II. DIFFERENCES BETWEEN WHITE COLLAR AND COMMON CRIMES AND CRIMINALS

White collar and common crimes differ in the obvious but trivial sense that they involve violations of different statutes. Our common crimes are those of postal theft and forgery, while our white collar crimes range across eight statutory categories. Here we ask whether there are any other differences. Although the different offenses might be described by a wide variety of attributes, we are particularly interested in two specific qualities. One concerns the consequences of the crime for its victims, or put differently, who is hurt and how badly. We call this the nature of victimization. The second centers on the nature of the offenses themselves, specifically whether white collar crimes have a distinctive complexity that might differentiate them from common crimes, at least by degree.

We present the results for selected indicators of victimization in Table I. For purposes of this table, we have combined results for the various white collar crimes in order to highlight the difference between ordinary, if you will, garden

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20. The data in this and other Tables is based on actual cases as reported in Presentence Investigations.
variety nonviolent economic crimes of a common crime nature, and garden variety nonviolent economic crimes of a white collar nature.

### TABLE I

**DIFFERENCES IN VICTIMIZATION BETWEEN NONVIOLENT COMMON CRIME AND WHITE COLLAR CRIME**

<table>
<thead>
<tr>
<th></th>
<th>Nonviolent Common Crimes (Base N)*</th>
<th>White Collar Crimes (Base N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Involving National or</td>
<td>1.0% (195)</td>
<td>16.2% (1243)</td>
</tr>
<tr>
<td>International Scope</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Involving 100 or More</td>
<td>1.9% (209)</td>
<td>17.7% (1269)</td>
</tr>
<tr>
<td>Victims</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Involving Taking of</td>
<td>2.1% (146)</td>
<td>29.7% (887)</td>
</tr>
<tr>
<td>More Than $100,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Involving Victimization of Organizations**</td>
<td>28.9% (194)</td>
<td>88.3% (1200)</td>
</tr>
</tbody>
</table>

* Base N is the total number of offenses on which the percentage figure is based.

** Includes all defendants who had individual as well as organizational victims.

The results are instructive. While roughly two percent of the common crimes yield as much as $100,000 or more, nearly thirty percent of the white collar crimes do so. The common crimes are virtually always confined to a state or local level, and although that is true of the bulk of white collar crimes as well, sixteen percent of them reach across state and regional borders and can be regarded as crimes of national or international scope. While it is rare for the common crimes to reach a large number of victims, many white collar crimes do.

The biggest difference, in raw percentage terms, concerns the nature of the victim. Most common crimes victimize individuals. In contrast, the majority of federal white collar offenses involves victimization of organizations. Admittedly, the organization most frequently victimized "belongs" to the taxpayer in the form of his federal government, although banks and other federally insured lending institutions are also targets. But it is infrequent, in federal white collar crimes, for the victim to be a single individual. Separating white collar from nonviolent common crimes necessitates distinguishing between two very different pools of victims.

We reach similar conclusions when we focus on the nature of the offense, and on other variables that might be regarded as crude indicators of the complexity of the criminal activity. As Table II shows, just as white collar crimes are likely to victimize organizations, they are also likely to use an organizational form for their commission. Fully forty percent of the white collar crimes in our sample are committed through the use of a formal organization, whether it be a small business, a large corporation, or something in between. The common crimes, in contrast, are almost always conducted either by lone individuals or by
offenders in loosely structured small groups. Only about nineteen percent of the common crimes involve five or more persons in addition to the defendant, while more than one-third of the white collar offenses have as many participants.

### TABLE II
Differences in Complexity Between Nonviolent Common Crime and White Collar Crime

<table>
<thead>
<tr>
<th></th>
<th>Nonviolent Common Crimes (Base N)</th>
<th>White Collar Crimes (Base N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibiting a Pattern to the Crime</td>
<td>23.9% (209)</td>
<td>65.1% (1329)</td>
</tr>
<tr>
<td>Involving Crimes Lasting More than a Year</td>
<td>7.0% (196)</td>
<td>50.9% (1239)</td>
</tr>
<tr>
<td>Involving Use of an Organization</td>
<td>2.4% (210)</td>
<td>40.2% (1334)</td>
</tr>
<tr>
<td>Involving Five or More Additional Persons</td>
<td>18.9% (206)</td>
<td>35.7% (1288)</td>
</tr>
</tbody>
</table>

Those who coded the PSI's were asked to discern whether there was a clearly defined pattern to the crimes, and as Table II shows, such a pattern is evident in nearly two-thirds of the white collar offenses and about one-fourth of the common crimes. Perhaps because of the relative success of patterned crimes using organizations, the biggest difference in the nature of the offenses lies in their duration: only seven percent of the common crimes lasted more than one year, while nearly two-thirds of the white collar crimes lasted at least that long.

We are aware, of course, that had we been studying other types of federally convicted offenders in our common crime category, these results might look different. For example, drug offenses and offenses prosecuted under the RICO\(^2\) statutes are likely to have organized crime components and therefore often a pattern, a duration, a number of offenders and an organizational form similar to some of the more complex white collar crimes. We nevertheless think it important that limiting the nature of the criminal activity to economic transactions with a heavy presumption of nonviolence demonstrates that common crimes are conducted differently from white collar crimes.

We shift now from the nature of the offense to the nature of the offender, and examine some of the pertinent occupational, educational and other demographic characteristics of common criminals and white collar criminals. Table III examines employment and education. It is probably not surprising to learn that of our white collar offenders, less than six percent were unemployed when they committed their crimes, since the commission of so many of their crimes depended on the offender's occupational position. The general unemployment rate for this period in the seven districts we examined was 5.9 percent. So our white collar criminals were doing slightly better than the general public. This is in

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stark contrast to the common crime defendants, whose unemployment rate was well over fifty percent.

**TABLE III**

**DIFFERENCES IN EDUCATION AND EMPLOYMENT BETWEEN COMMON AND WHITE COLLAR CRIMINALS**

<table>
<thead>
<tr>
<th></th>
<th>Nonviolent Common Crimes (Base N)</th>
<th>White Collar Crimes (Base N)</th>
<th>General Public*</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Education</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>High School Graduates</td>
<td>45.5% (209)</td>
<td>79.3% (1330)</td>
<td>69.0%</td>
</tr>
<tr>
<td>College Graduates</td>
<td>3.9% (209)</td>
<td>27.1% (1330)</td>
<td>19.0%</td>
</tr>
<tr>
<td><strong>Employment</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unemployed</td>
<td>56.7% (178)</td>
<td>5.7% (1225)</td>
<td>5.9%</td>
</tr>
<tr>
<td>Steadily Employed</td>
<td>12.7% (166)</td>
<td>58.4% (1229)</td>
<td>n/a</td>
</tr>
</tbody>
</table>

* These figures refer to the population of the seven districts sampled. **FEDERAL JUDICIAL CENTER, JUDICIAL DISTRICT DATA BOOK, 1983** (1983) (companion computer tape available from the Interuniversity Consortium for Political and Social Research). Neither the Federal Judicial Center nor the Consortium are responsible for analyses herein.

What may not have been so obvious is that less than sixty percent of the white collar defendants can be regarded as steadily employed. We do not have a similar figure for the districts as a whole, but this at least suggests that a large part of the white collar criminal population cannot depend on steady and stable employment at the time of their crimes.

With regard to education, the white collar crime offenders are better educated than the general public, while the common crime offenders occupy a relatively disadvantaged position. More than seventy-eight percent of the white collar offenders are high school graduates in contrast to sixty-nine percent of the general public. Among the common crime defendants, fewer than half had graduated from high school. Whereas only 3.9 percent of the common crime defendants were college graduates, 27.1 percent of the white collar defendants had obtained college degrees. Over seventy percent of the white collar defendants, however, had not completed a college education and thus lack one of those badges of "high social status" that Sutherland and others sometimes identify with white collar criminals.

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22. We defined "steady employment" as uninterrupted employment during the five-year period preceding conviction.
Still, the 27.1 percent graduation rate exceeds that of the general population, whose rate is roughly nineteen percent.

Other demographic characteristics, appearing in Table IV, are worthy of at least a brief review. It is well known that crime is largely a male phenomenon and that is surely true of white collar crime as well. Over eighty-five percent of the offenders in our eight white collar categories are male. The surprise is that so many of the common crime defendants in our sample are female. In most studies of sex differences in arrest or conviction rates, eighty-five to ninety percent of offenders are male. The federal crimes of postal theft and postal forgery, in contrast, would appear to draw a substantial number of female offenders.

### TABLE IV

| Differences in Demographic Characteristics Between Common and White Collar Criminals |
|---------------------------------|----------------------------------|-----------------|
| Nonviolent Common Criminals     | White Collar Criminals           | General Public  |
| (Base N)                        | (Base N)                         |                 |
| Sex (Male)                      | 68.6% (210)                      | 85.5% (1342)    | 48.6%*          |
| Race (White)                    | 34.3% (210)                      | 81.7% (1340)    | 76.8%**         |
| Age (Mean Age)                  | 30 (210)                         | 40 (1342)       | 30*             |
| Religion                        |                                  |                 |
| Protestant                      | 59.6% (171)                      | 50.7% (1073)    | 70.1%***        |
| Jewish                          | 2.9% (171)                       | 15.2% (1073)    | 2.0%***         |
| Catholic                        | 23.5% (171)                      | 23.4% (1073)    | 25.0%***        |


** This figure refers to the population of the seven federal districts in our sample. Federal Judicial Center, Judicial District Data Book, 1983 (1983) (companion computer tape available from Interuniversity Consortium for Political and Social Research). Neither the Federal Judicial Center nor the Consortium are responsible for the analysis herein.

*** These are national figures as reported in Public Opinion, Nov.-Dec. 1978, at 33. Our best estimate of corresponding figures for the seven districts is 64%, 8% and 25%.

The racial composition of white collar and common crime reflects at least in part the racial composition of the job market: over eighty percent of our white

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23. Sutherland, supra note 1, at 9 (defining white collar crime as "a crime committed by a person of respectability and high social status in the course of his occupation").
collar offenders are white, in contrast to slightly over one-third of the common crime defendants in our sample. Although crime is usually presumed to be a young man's game, the average white collar offender in our sample is forty years old, and his common crime counterpart is far beyond late adolescence, at an average age of thirty. That puts the common crime offenders at roughly the average age of the general population and the white collar offenders ten years beyond it.

With respect to religion, there is one clear finding. Although many in both white collar and common crime categories do not claim a particular religious faith, the Catholics who do so are distributed similarly between common crime and white collar crime, at roughly twenty-three percent each, closely paralleling the percentage of Catholics (twenty-five percent) in the adult population of our districts. In contrast, Jews, although roughly eight percent of the population of our districts, make up only three percent of our common crime sample, but fifteen percent of our white collar sample.24 It would be a fair summary of our data to say that, demographically speaking, white collar offenders are predominantly middle-aged white males with an over-representation of Jews. In contrast, the common crime defendants are mainly non-white males—although women make up a substantial minority—who are younger than the typical white collar offenders.

These data do not exhaust the differences between white collar and common crime defendants. For example, although white collar offenders have what some may regard as a surprisingly high number of prior arrests and convictions (forty-six and thirty-four percent respectively), they are still distinguished in this respect from the common crime defendants, virtually all of whom have prior involvement with the criminal justice system. While home ownership is not a sure sign of social stability, it is noteworthy that forty-six percent of our white collar offenders own their own homes, in contrast to only six percent of the common crime offenders.

It seems well established, then, that whatever else may be true of the distinction between white collar and common crime offenses and offenders, they definitely do draw from distinctively different sectors of the population, and they have distinguishable patterns of both offense and victimization.

III. ON THE DIVERSITY WITHIN WHITE COLLAR CRIME: THE HIERARCHY OF WHITE COLLAR OFFENDING

A close look at the actual cases prosecuted under the various white collar crime statutes shows what diversity the category contains. Initially, we examine the eight separate offense categories to see if they cluster into meaningful types. A helpful analysis considers whether the same variables that distinguish between white collar and common crimes, namely their complexity and the nature of

their victimization, serve also to make meaningful distinctions within the white collar crime category itself.

Table V suggests the utility of this approach. The eight offense categories divide reasonably comfortably into three types, forming a rough hierarchy of offense complexity. At the top of the hierarchy are antitrust and securities fraud offenses, where the crimes are patterned and repetitive, and involve several people in an organized conspiracy. Although the two offenses differ in their basic mode of commission, with antitrust depending upon collusion and securities fraud upon systematic deception, they are similar in that both require a good deal of planning and organization.

**TABLE V**

**Differences Between White Collar Crimes: Complexity**

<table>
<thead>
<tr>
<th>Offense Categories</th>
<th>Pattern to the Crime (Base N)</th>
<th>Organization Used (Base N)</th>
<th>Five or More Other Persons Involved (Base N)</th>
<th>Duration of One Year or More (Base N)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>High</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Antitrust</td>
<td>99.1%</td>
<td>100.0%</td>
<td>88.4%</td>
<td>88.8%</td>
</tr>
<tr>
<td>(116)</td>
<td>(114)</td>
<td>(112)</td>
<td>(107)</td>
<td></td>
</tr>
<tr>
<td>Securities Fraud</td>
<td>95.0%</td>
<td>85.3%</td>
<td>63.1%</td>
<td>70.8%</td>
</tr>
<tr>
<td>(211)</td>
<td>(224)</td>
<td>(214)</td>
<td>(212)</td>
<td></td>
</tr>
<tr>
<td><strong>Moderate</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mail Fraud</td>
<td>81.4%</td>
<td>33.5%</td>
<td>26.8%</td>
<td>48.8%</td>
</tr>
<tr>
<td>(188)</td>
<td>(188)</td>
<td>(186)</td>
<td>(182)</td>
<td></td>
</tr>
<tr>
<td>False Claims</td>
<td>61.5%</td>
<td>28.0%</td>
<td>18.2%</td>
<td>50.6%</td>
</tr>
<tr>
<td>(156)</td>
<td>(157)</td>
<td>(154)</td>
<td>(146)</td>
<td></td>
</tr>
<tr>
<td>Credit Fraud</td>
<td>48.1%</td>
<td>24.4%</td>
<td>14.1%</td>
<td>28.3%</td>
</tr>
<tr>
<td>(158)</td>
<td>(157)</td>
<td>(155)</td>
<td>(145)</td>
<td></td>
</tr>
<tr>
<td>Bribery</td>
<td>48.8%</td>
<td>37.3%</td>
<td>39.8%</td>
<td>33.8%</td>
</tr>
<tr>
<td>(82)</td>
<td>(83)</td>
<td>(83)</td>
<td>(77)</td>
<td></td>
</tr>
<tr>
<td><strong>Low</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax Fraud</td>
<td>46.2%</td>
<td>17.6%</td>
<td>3.4%</td>
<td>84.1%</td>
</tr>
<tr>
<td>(208)</td>
<td>(210)</td>
<td>(210)</td>
<td>(202)</td>
<td></td>
</tr>
<tr>
<td>Bank</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Embezzlement</td>
<td>39.2%</td>
<td>9.0%</td>
<td>7.5%</td>
<td>24.1%</td>
</tr>
<tr>
<td>(199)</td>
<td>(201)</td>
<td>(200)</td>
<td>(187)</td>
<td></td>
</tr>
</tbody>
</table>

There exist substantial differences between the categories on a number of issues. Virtually all of the antitrust and securities fraud crimes involve patterned activities and the use of a formal organization. Fewer than half of the
tax fraud and bank embezzlement cases are patterned, and fewer than a fifth use an organization for their commission. They also differ enormously in the number of people involved. By noting the vast variation within white collar crimes, we sense the danger of referring to white collar crimes as a general category. Mail fraud, false claims and statements, credit fraud and bribery tend to be in an intermediate category, while tax fraud and bank embezzlement are at the low end of the complexity scale.

A similar conclusion is warranted by our examination of the nature of victimization. Table VI provides data on the dollar amount of the illegal gain, the number of victims, and the geographic scope of victimization. Again antitrust and securities fraud occupy a very clear and distinctive position in all three measures of victimization. The victims of antitrust offenses tend to be vast in number, but the monetary amount associated with each victim so small that it is often unnoticed, as in the typical consumer price fixing scheme that drives up the price of consumer goods by a few pennies. The two offenses also differ, of course, in who benefits. The profits from most antitrust offenses return to the corporation, while the profits of security frauds go more directly to the individuals who commit the crimes. Despite these differences, the two crimes do share distinctive positions at the top of many indicators of white collar illegality.

| TABLE VI |
| DIFFERENCES BETWEEN WHITE COLLAR CRIMES: VICTIMIZATION |
|---|---|---|
| Offense Categories | 100 or more Victims (Base N) | $100,000 or More Taken (Base N) | Statewide or Wider Scope (Base N) |
| High |
| Antitrust | 85.0% (144) | 100.0% (116) | 82.0% (111) |
| Securities Fraud | 61.9% (160) | 86.8% (144) | 80.5% (128) |
| Moderate |
| Mail Fraud | 10.7% (187) | 33.6% (140) | 36.0% (169) |
| Low |
| False Claims | 1.3% (157) | 13.4% (97) | 8.4% (155) |
| Credit Fraud | 2.0% (158) | 21.4% (117) | 5.8% (155) |
| Bribery | 1.2% (82) | 5.1% (59) | 8.7% (81) |
| Tax Fraud | 1.4% (210) | 12.9% (132) | 1.5% (208) |
| Bank Embezzlement | 0.0% (201) | 9.9% (182) | 6.5% (201) |

In contrast to the results under our complexity analysis, the victimization measures put bank embezzlement and tax fraud—together with false claims,
credit fraud and bribery—at the bottom of the hierarchy of white collar offenses. Although there is a good deal of variation within these categories, particularly in the magnitude of the offense, they share a pattern of harming only one victim (typically a large public or private organization) yielding, on the average, a relatively small profit, and they are largely local in their commission and impact. Postal and wire fraud fall at an intermediate level, with more victims, more money taken and a greater geographic scope.

When we turn from examining the nature of the crimes to the nature of the offenders, we see some interesting similarities and differences. Table VII presents twelve background characteristics indicating who commits each type of white collar crime in what kind of social situations.

**TABLE VII**  
SOCIAL AND DEMOGRAPHIC CHARACTERISTICS OF WHITE COLLAR OFFENDERS BY STATUTORY OFFENSE

<table>
<thead>
<tr>
<th></th>
<th>Antitrust</th>
<th>Securities Fraud</th>
<th>False Claims</th>
<th>Credit Fraud</th>
<th>Mail Fraud</th>
<th>Bank Embezzle</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race (White)</td>
<td>99.1%</td>
<td>99.6%</td>
<td></td>
<td>83.3%</td>
<td>61.8%</td>
<td>76.8%</td>
</tr>
<tr>
<td>Sex (Male)</td>
<td>99.1%</td>
<td>97.8%</td>
<td></td>
<td>95.2%</td>
<td>84.7%</td>
<td>82.1%</td>
</tr>
<tr>
<td>Age (Mean Age)</td>
<td>53</td>
<td>44</td>
<td>45</td>
<td>38</td>
<td>39</td>
<td>38</td>
</tr>
<tr>
<td>Employment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Steadily Employed</td>
<td>96.6%</td>
<td>59.4%</td>
<td>80.6%</td>
<td>68.4%</td>
<td>42.2%</td>
<td>46.7%</td>
</tr>
<tr>
<td>Mean Socioeconomic</td>
<td>61.1</td>
<td>67.4</td>
<td>56.2</td>
<td>59.9</td>
<td>57.3</td>
<td>52.6</td>
</tr>
<tr>
<td>Status*</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unemployed</td>
<td>0.0%</td>
<td>0.0%</td>
<td>11.5%</td>
<td>17.8%</td>
<td>24.2%</td>
<td>24.8%</td>
</tr>
<tr>
<td>Owners or</td>
<td>69.2%</td>
<td>74.1%</td>
<td>33.3%</td>
<td>36.8%</td>
<td>16.4%</td>
<td>28.0%</td>
</tr>
<tr>
<td>Officers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial Standing</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Median Assets</td>
<td>$650,000</td>
<td>$59,000</td>
<td>$49,500</td>
<td>$45,000</td>
<td>$7,000</td>
<td>$4,000</td>
</tr>
<tr>
<td>Median Liabilities</td>
<td>$81,000</td>
<td>$55,000</td>
<td>$23,500</td>
<td>$19,000</td>
<td>$7,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>Education</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>College Graduates</td>
<td>40.0%</td>
<td>43.0%</td>
<td>27.0%</td>
<td>27.0%</td>
<td>18.0%</td>
<td>29.0%</td>
</tr>
<tr>
<td>Home Ownership</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home Owners</td>
<td>87.8%</td>
<td>62.1%</td>
<td>57.7%</td>
<td>57.0%</td>
<td>44.8%</td>
<td>42.1%</td>
</tr>
<tr>
<td>Criminal Background</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prior Convictions</td>
<td>7.7%</td>
<td>27.6%</td>
<td>43.2%</td>
<td>25.0%</td>
<td>48.7%</td>
<td>48.7%</td>
</tr>
<tr>
<td>N of Cases**</td>
<td>117</td>
<td>225</td>
<td>210</td>
<td>84</td>
<td>158</td>
<td>157</td>
</tr>
</tbody>
</table>

* The source for these figures is described at note 25, infra.
This is the maximum number of cases used. Specific statistics may have been calculated on a smaller number of valid cases.

The eight categories can be meaningfully reduced to four groups. These groups also (with one exception) seem to form a hierarchy. At the top again are antitrust and securities fraud offenders: middle-aged white males with stable employment in white collar jobs, more often than not owners or officers in their companies, who are well above the average for the nation in their socio-economic positions. Of the two categories, the antitrust offenders tend to be richer and are less likely to have had prior convictions, though they are slightly less educated and rank slightly lower on measures of social standing. The perpetrators in the tax and bribery cases are also predominantly white males, although a little more often unemployed, a little less educated, and somewhat more likely to have prior criminal convictions than their antitrust and securities fraud counterparts. They are generally steadily employed in white collar jobs with decent financial standing, and at least a third are owners or officers in their businesses. At the lower end of the spectrum are the credit fraud, false claim and mail fraud offenders. Fewer than half are steadily employed, and a quarter of each were unemployed at the time of their offenses. Although their social standing as measured by the Duncan socioeconomic index does not distinguish them from the categories above them, they are far less likely to have substantial financial assets, or college degrees, or to own their own homes, and nearly half have prior criminal convictions. These offenders are younger on the average than the others, and they are more likely to be female or non-white, although white males continue to be by far the modal category. Finally, we have bank embezzlers, who cannot easily be subsumed under one of these other three categories. They are far younger on the average than the others, and are nearly as likely to be female as male. They are like the latter of our three categories in financial assets, but they are far less likely than the latter category to be either unemployed or to have a prior criminal record.

Thus, the heterogeneity that we observed with respect to the nature of white collar offenses is repeated when we examine the social backgrounds of the perpetrators. But with the exception of the uniformly high social position occupied by our antitrust offenders, the two features of offense and background are not highly correlated. Mail fraud offenders, for example, tend to lie higher up in the hierarchy of organization and victimization than might be predicted from their social backgrounds alone. By contrast, those convicted of tax fraud tend to have higher social and professional standing than might have been presumed from knowledge of the apparently low complexity of their offenses.

We will be in a better position to explore the interrelationship of offenses and offenders after we examine specific crimes in more detail.

Despite the wide variation within white collar offenses, even those at the bottom of the hierarchy remain clearly distinct, as a quantitative matter, from the nonviolent common crime sample. A comparison of Table VII with Table III shows, for example, that embezzlers, the least likely among white collar offenders to be college graduates or to be stably employed, are three times higher in these categories than nonviolent common crime offenders. So the notion of a fairly clear hierarchy of white collar offenders does not obliterate the distinction between white collar and common criminality.

IV. DIVERSITY WITHIN STATUTORY CATEGORIES

There is more reason to expect homogeneity within white collar crime statutes than across them. Although some white collar criminal statutes are narrow in scope, most are designed to cover a wide range of conduct. Without going into each statute in detail, a close look at the cases successfully prosecuted under two of them, the mail fraud and bank embezzlement statutes, should serve to make the point.

The mail fraud statute is notoriously broad:

> Whoever, having devised or intending to devise any scheme or artifice to defraud . . . for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom any such matter or thing, or knowingly causes to be delivered by mail . . . any such matter or thing, shall be fined not more than $1000 or imprisoned not more than five years, or both. . . . 26

With the use of the mail or electronic media as the only criteria holding these crimes in common, we should not be surprised to find an extraordinary variety of acts prosecuted under the mail fraud statute. Our sample27 has a large number of “something for nothing” mail frauds where the purchaser or investor is solicited through magazine advertising or direct mail campaigns to buy land, oil, or bags of rare coins only to discover that the product does not exist. Cases range from simple one-shot schemes to complicated, fraudulent land deals netting millions of dollars. For example, in one case, defendants placed misleading advertisements in European periodicals, seeking investors for oil and gas wells in the United States. Over a thousand individuals bought securities through the mail. They sent funds estimated to be in the millions of dollars. But the money was used to pay prior investors the income that they were led to believe their wells were producing. In fact, the wells were produc-

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27. Information referred to in the following discussion was obtained from confidential PSI reports. Citations, therefore, are omitted to preserve confidentiality.
ing only a small fraction of the reported income. Organizations are also typically victims of such schemes as phony applications for credit cards or government benefits. The mail and wire statute is also used when the fraud is being committed, in effect, on the mail or wire itself. This happens when people are detected using illegal mechanisms to make unpaid long distance phone calls. In still other cases (about fifteen percent of the total) the fraud was committed directly against the government by government employees obtaining kickbacks for acceptance of low bids for government work.

The bank embezzlement statute, on the other hand, seems narrow by comparison with mail fraud:

Whoever, being an officer, director, agent, or employee of, or connected in any capacity with any Federal Reserve bank, member bank, national bank or insured bank ... embezzles, abstracts, purloins, or willfully misapplies any of the moneys, funds or credits of such bank or any moneys, funds, assets or securities intrusted to the custody or care of such bank, or to the custody or care of any such agent, officer, director, employee or receiver, shall be fined not more than $5000 or imprisoned not more than five years, or both. ...

Under this statute, the defendants all share the quality of being somehow "connected" with a bank—but there the similarity ends. Although, as our earlier analysis showed, these cases are uniquely different from the other statutory categories, major differences are apparent even within the bank embezzlement category. Many of the violations are committed by employees who hold a special, trusted position within a business: tellers and clerks, who have a legitimate access to cash, simply take some. These are "hand in the till" cases, and they are found in our sample with some frequency. Lower echelon defendants are likely to be young, usually with only a high school education, and are often female and black. Although the median embezzlement is in the five to ten thousand dollar range, many of these defendants take much less. Similar cases also occur with those higher up in the hierarchy, such as when a loan officer makes a loan to a nonexistent loan applicant. For example, the vice president of one important commercial bank in New York City made a series of large loans to foreign ship owners even though he knew that their collateral was overvalued and the loans would not be repaid. Because of this misapplication of funds, the bank lost between thirty and sixty million dollars. The two examples of mail fraud and bank embezzlement are enough to suggest how unlikely it is that we will be able to define a homogeneous group of offenders based upon their statute of conviction.

28. One defendant, a prosecutor, for making $187 worth of such calls, and for supplying his daughter with the same type of device from which she made approximately $1200 in calls.

V. GARDEN VARIETY WHITE COLLAR OFFENDING

At the risk of seeming blatantly inconsistent (having just established the extraordinary range and variety of white collar offenses—both across and within statutory categories), we now assert a generalization about the category of white collar offending. We do so because of our concern over the recent return of interest in white collar crime which has been accompanied by a stridency, verging on romanticism, that we think may lead to a fundamental misconception of the kind of problem that white collar crime represents. A distinction between “crime in the streets” and “crime in the suites,” with a vision of high-placed business executives gone wrong, is a typical part of empirical reality, and there are many such cases in the current news (especially with the SEC’s current focus on insider trading). These cases may be symbolically important for what they convey about the nation’s business and financial leadership, and they are surely the stuff of which novels and popular movies are made.

As important as these cases are, individually, they nevertheless comprise only a tiny portion of the white collar cases processed by the federal court system. This is true whether one examines all the types of white collar crime we have reviewed here, or restricts oneself to the top of the hierarchy. In either case, after reading hundreds of presentence investigation reports describing such offenses, one emerges with a strong sense of the banal, mundane quality of the vast majority of white collar offenses. Perhaps if we had been studying the smaller federal districts, rather than the metropolitan centers, we would have a stronger sense of the cleverness, creativity and resourcefulness of white collar offenders, but we rather doubt it. Although we did find a few cases in each of our crime categories of highly placed officials gone wrong and of marvelously complex schemes, they are overwhelmed by the everyday quality of most white collar offenses.

Consider what some would regard as the most elite form of white collar crime, namely antitrust offenses. Although there are instances like the famed General Electric case of 1926,30 the vast majority of cases in our sample are characterized by low-level, local or narrowly regional offenses that are hardly of major significance. Here is one such case taken from our project files:

Five linen companies and four individuals from the Miami area were indicted for their participation in a scheme to allocate accounts and to refrain from competing for each other’s customers. Under the agreement reached by the parties, which was in effect from 1964 to 1974, newly formed businesses or firms without previous linen service might be solicited by all comers; those having established relationships with one of the defendants could not be approached. Apparently, both meetings and telephone conversations were used to keep the agreement going.

Although a number of strategies were employed to discourage the dissatis-
fied customers of one conspirator from switching to another, accounts did occasionally change hands. Sometimes businesses were so unhappy they could not be dissuaded; in other cases, overzealous salespeople would, intentionally or not, sign one of their competitors' firms. Records of such events would be maintained, and periodic accountings between companies would be made. The defendant to whom business was owed might be referred to a displeased customer of the party that was ahead, or it might be agreed that one firm would take a certain amount of business from the other.

Organizations and municipalities requesting bids on linen service were treated in like manner. The first bid was wide-open, but the company that had been successful initially would be allowed to win all subsequent bids. The defendant handling the account would notify competitors of its intended bid, permitting the others to submit higher, or what are called complementary, bids or to not bid at all.

One of the indicated individuals, the president of three of the defendant corporations, was considered the leader of the conspiracy by the prosecution. The corporate defendants were primarily family-owned businesses. As in so many of these cases, it is not clear how the government discovered the conspiracy. The Justice Department's investigation of a very similar agreement in the uniform rental industry in Miami (which involved one of the companies indicted in this case) began when a small company complained of harassment by coconspirators because it was soliciting their customers.

We cannot say that this case is typical in every respect, but it is certainly not an unusual one. Many similar arrangements occur, most often in connection with the construction industry but ranging across a wide variety of businesses. Our point, therefore, is not that these are inconsequential offenses, only that they are common, for the most part requiring little sophistication. And if that is true for antitrust, it is surely true of many offenses in our sample. Most of our false claims cases, for example, involve small amounts of money claimed illegally against a wide variety of government agencies: the Veteran's Administration, the IRS, even the U.S. Air Force and the U.S. Marshall's office. Similarly, although the bribery statute occasionally nets a very prominent government official, more typical defendants include a housing appraiser for the Veterans Administration, a federally supported nursing home

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31. We are indebted to Mitchell Rothman, who provided this description of the case which was based on our project files. M. Rothman, THE CRIMINAL REVISITED 71-72 (May, 1982) (unpublished dissertation, Yale University).
32. Another case, for example, involved a handful of real estate brokers in the Baltimore area who agreed, in conversations taking place at a nearby country club, that they should raise the price of real-estate sales commissions by one percent.
33. These offenses clearly have significant consequences for their victims. In the linen cases, for example, customers obviously had to pay more than they would have otherwise over a period of many years.
34. One case in our sample involves a federal employee who was convicted for filing a travel voucher inflated by $204.
operator receiving kickbacks from a drug company, and the owner of a small business attempting to bribe an IRS agent.

The same banality is prevalent in most tax fraud cases in our sample. Convictions for willful failure to report legal income are common, for the fraudulent component might include simply reporting an inflated number of exemptions. Employers prosecuted under the tax statutes often failed to remit taxes lawfully withheld from employee paychecks. These offenses require only a simple misrepresentation on forms submitted to the IRS.

These cases admittedly have an undramatic quality, and we think it well to remember that they form the bulk of the white collar crime cases in our major federal districts. Perhaps this should not be surprising, since the simplest cases are often the easiest to detect: rare is the prosecutor’s office who has the time and staff to develop more than a handful of complex white collar cases. Undoubtedly there is some truth to the notion that successful prosecution of such cases may have a deterrent effect on the business community. But just as a carefully planned and intricate bank robbery or safe job lends color to the much more frequent convenience store stick-up, such cases only lend color and drama to the more mundane forms of white collar offending.

VI. JOINING OF OFFENSE AND OFFENDER: THE ROLE OF STATUS AND PRESTIGE

Earlier we noted that the general differences in status and background between the white collar offenders in our survey did not necessarily correspond to the differences in the nature and consequences of their crimes. We are thus compelled to ask how offense and offender fit together. As we step back from the data as organized by statutory category, we can begin to discern how characteristics inherent in the offense and the offender combine to explain why some instances of white collar crime produce offenses of great magnitude while most do not. We will draw from an earlier analysis and from the findings reported above to at least suggest one way in which the qualities of both offense and offender may combine to produce the greatest amount of damage.

The most consequential white collar crimes—in terms of their scope, impact and cost in dollars—require for their commission, as a rule, that their perpetrators operate in an environment in which they have access to both money and the organizations through which money moves. The status or prestige of the organization or of the individual who inhabits it is only a common incidental feature, for the key factor is location in the organization where money is to be found.

37. There are many such organizations that are otherwise unremarkable: state and federal agencies with multimillion dollar budgets; private companies with huge cash flow businesses; organizations whose clients may not be individually wealthy but who are worth many millions in the aggregate.
Of course, merely working in an organization does not, of itself, provide access to the institution's resources. Those who have positions as managers or officers are, for example, better situated to commit white collar offenses than are lower level employees. A crucial way in which offender characteristics such as high social status and education are linked to the degree of white collar victimization is that such background characteristics provide more opportunity to occupy organizational positions with the greatest potential for large-scale offenses. Thus, officers, who tend to commit more large-scale crimes, also tend to be well-educated and of high social status. Where high echelon positions can be occupied without passing hurdles of education or professionalism—through promotions from within the agency or company, for example—we should find, correspondingly, individuals of lower social status committing a greater number of large-scale offenses. Many individuals promoted from within an organization may have loyalties that will make cheating their own companies or customers difficult. A potential offender of this kind may, therefore, be more likely to steal from the company, as in most antitrust violations, rather than for it.

Status and prestige may also have value beyond their role in providing opportunity—they may lend the appearance of legitimacy, and thus make it easier for white collar offenders to obtain money from unsuspecting victims. It may also be that offenses are detected less readily when those who commit them are in high status positions. We suspect, however, that the duration of an offense, like its financial magnitude, is more often a result of the offender's ability, through power and control, to shape the audit and accounting processes to avoid detection.

If we are right, this should mean that high status in society should sometimes aid in the commission of crimes of the largest magnitude, but it will seldom be enough by itself. The power or position conferred by status empowers the offender rather than status itself. Accordingly, persons in key positions (with access to the flow of money), whether of high status or not, have a greater potential for major white collar offenses. That potential is limited, however, for those outside of such positions, even when their status in society and their occupational prestige is very high.

Consider the following two not-so-hypothetical cases:

A. A medical doctor, with his own individual practice, keeps fraudulent books on his practice and commits income tax fraud.

B. A middle-manager in a government hierarchy has approval powers on a major government program and takes kickbacks for processing fraudulent claims.

The former has the prestige we associate with the medical profession—the latter, a relatively nondescript administrative position. Which has the greater potential for major white collar offenses? The potential of the former is limited, however, even when his status in society and his occupational prestige is very high.

38. See R. Gan Optical: BAD BUSIN. & the OPM SCANDAL AND THE SEDUCTION OF THE ESTABLISHMENT (1985) (describing case of Myron and Mordy, attributing this belief to those who go to trouble to create positive impression by moving offices to a prestigious address).
tential to commit financial frauds of significant magnitude? The answer will depend in part on the kinds of accounting and surveillance mechanisms in place in the two cases, but, in many instances, it will not be the one with greater status in society.19

VII. JOINING OFFENSE AND OFFENDER: THE ROLE OF AGE, RACE AND SEX

What about other social background characteristics like age, race and sex? Most criminals are young, but not those who commit higher-level white collar crimes. As with status, we think that the link between age and white collar offending is largely due to opportunity. It takes time, and therefore age, to achieve the kind of position that facilitates most large-scale white collar crime. Bank trust officers are older than bank tellers, and their crimes are more lucrative. Most antitrust offenses can be carried out only by those who have advanced fairly far up the corporate ladder. Thus, like status and prestige, age is most likely to affect the severity of the offense not directly, but through the opportunities it confers.

What then of race and sex? It is certainly possible that the prejudicial effect of race is great enough that even when blacks achieve "positional" equality (and therefore, presumably, equality of opportunity for crime), they will remain handicapped in their search for equal dollars from that opportunity. Minorities in our sample (most of whom were black) consistently had lower illegal gains than whites, and there is some evidence that the difference is not simply due to their concentration in the lower levels of the white collar crime hierarchy.40

The situation of women offenders is also clear from our data. We take it as no accident, but a powerful statement regarding sex discrimination in employment, that women offenders surveyed are concentrated in both bank embezzlement and to a lesser extent in the lower level frauds. Although they comprise about 15 percent of the sample, they account for less than 2 percent of the highest tier of white collar offenders—those who are convicted of antitrust or securities fraud crimes.

On almost every measure available, women offenders tend to exhibit characteristics closer to those of nonviolent common crime offenders than their male counterparts. They are younger, less likely to be college educated, less "well-placed" occupationally, less well-off financially, and less likely to be white. Their crimes net significantly less, in part because they are less often in organizational positions that provide opportunity for large-scale crimes. Their offenses tend also to be less sophisticated and of shorter duration than those of male white collar offenders. The only area where they are less like common-

39. This is especially true if we value the offense not in dollars gained by our two hypothetical offenders, but by the dollars lost to the government in the two cases.

40. A regression analysis to explore levels of victimization yields a significant negative coefficient for race, even after the considerable effects of organization and social class variables have been accounted for.
crime defendants than males is in prior record; women are less likely to have prior convictions than are men. In virtually all other respects, however, they could be regarded as being one degree closer to common-crime offenders than those males who commit white collar crimes.

A closer look within particular categories of offenses would probably reveal important additional differences between men and women both in offense style and in the role the offenses play in their own lives. It would be consistent with the generally lower economic position of women offenders if the resources from their crimes more often went toward family support, for example. We showed earlier that given statutory categories include a great diversity of offenses, and it would be surprising if some of that diversity were not attributable to gender. 41

On the future of women's white collar criminality, we remain struck by the fact that the strongest correlates of major white collar victimization are attributes of positions, rather than of persons. Our analysis suggests that women who achieve status and authority in organizations are offered opportunities in white collar crime similar to those offered to men. But so long as women are under-represented in those types of positions, they may be under-represented in the higher tiers of white collar crime and will continue to be drawn disproportionately from the ranks of banktellers, secretaries and bookkeepers.

VIII. DISCUSSION

Among a variety of issues deserving further commentary and discussion, we would like to address just one: what do our empirical conclusions suggest with regard to efforts to explain white collar crime? Recent theorizing joins the issue: Is white collar crime a special phenomenon requiring an explanation different from that required of common crime? More specifically, with respect to our own findings, do the crimes occurring at different levels in the hierarchy of white collar criminality each require a separate explanation? 42 Or are Hirschi and Gottfredson right in their attack on the value of white collar crime as a concept, and in their insistence that we search for an underlying theory that will explain all crime? 43 This is not the place to consider these issues in detail, but it might be useful to offer some observations based on our quantitative data and on a reading of the cases on which these data are based.

Hirschi and Gottfredson define crimes as events in which force or fraud are used to satisfy self-interest, which for them is simply "the enhancement of pleasure and the avoidance of pain." 44 They assume that if events are to be

41. See K. DALY, GENDER AND WHITE-COLLAR CRIME (Nov. 1986) (manuscript prepared for meeting of American Society of Criminology) (pursuing more detailed examination of gender differences in white collar crime using this body of data).
44. Id. at 959.
maximally pleasurable, they should have a certain immediacy, as well as certainty of outcome, and should require minimal effort. With this conception of crime, it follows that

[c]riminality is the tendency of individuals to pursue short-term gratification in the most direct way with little consideration for the long-term consequences of their acts... [P]eople high on this tendency are relatively unable or unwilling to delay gratifications; they are relatively indifferent to punishment and to the interests of others. As a consequence, they tend to be impulsive, active, and risk taking.\[45\]

Whether this view of crime and criminality will turn out to have heuristic value remains to be seen, but it does lead Hirschi and Gottfredson to one conclusion we share, that white collar occupations tend to require traits like educational persistence, stability of employment, willingness to delay gratification and to work within structures requiring deference to others. They draw the natural inference, therefore, that the rate of offending among those in white collar positions ought to be relatively low—probably lower than that associated with other kinds of work. It would follow from their analysis that when people do commit white collar crime, they should be operating from the same short-term gratifications and indifference to punishment as the common-crime offender: The securities fraud offender should have been a youthful mugger but missed the boat. How else do we explain why the average age of a white collar offender is close to forty, and why most of them are first offenders? In any event, although we admire the ambition to create a general theory of criminality, and recognize that such an ambition is in the spirit of Sutherland, we doubt that it is the wisest path to understanding.

Part of our concern is with the breadth of the concept of crime and criminality itself. Although much criminality is hedonistic, our criminal statutes criminalize acts that could hardly be said to be motivated by immediate and short term self-interest. In our own sample, in addition to tax cheats we have tax protestors—persons who chose to express their unhappiness with our government by withholding the monies they owe. They, along with political terrorists or vigilantes, would be hard to explain in the simple terms put forth by a theory of immediate ego gratification.\[46\]

But suppose we limit our inquiry to the category of “nonviolent crimes engaged in for financial gain.” Might we then have an explanation that would be applicable to all such cases? Perhaps—at the most general level. The one thing the lowliest con man and the highest white collar offender would seem to share is salesmanship—the capacity to convince others that the person in question is worthy of their trust and their money. The same salesmanship that

45. Id. at 959-60.
leads some persons to be chosen as “Man of the Year” by their companies can also be used for illegitimate purposes. The capacity for concealment or manipulation, for saying things without meaning them, unites virtually all forms of nonviolent, financially motivated frauds. What then differentiates those in the lower reaches of nonviolent offending from those at or near the top of the white collar crime hierarchy? Even if we agreed with Hirschi and Gottfredson that the proportion of cheats at the higher level ought to be smaller (both for the reasons stated earlier and because being at or near the top does, after all, provide a good living) when it does occur, how do we explain it?

We might speculate that there are two paths that lead to crime at that level. On the one hand there are those who learned early how to use salesmanship, guile, and associated techniques to become financially successful within a legitimate occupational structure. Their hard work and salesmanship paid off as they moved up the ladder. But since the ladder is shaped like a pyramid, competition gets stiffer the further up one goes, and these individuals sooner or later find that they can no longer make the same headway without bending or breaking the rules. They therefore slip over the boundary of legality. These are the high-risk ego gratifiers that Hirschi and Gottfredson analyzed.

The second path represents an important variant. Criminals of this type also achieve success through patience and hard work, although acquiring in the process habits of spending great amounts of money. They then find themselves in situations where they or their companies are under great financial pressure, and where they risk losing the lifestyle that they have achieved. They may perceive this situation as a short-term threat that can be met through short-term fraud—a temporary taking to be restored as soon as business fortunes turn around. The motivation for their crime is not selfish ego gratification, but rather the fear of failing—of losing what they have worked so hard to gain. It leads them, however, to the same kinds of illegal activity as the former type. But those who follow this path, we speculate, are far more likely to feel the social pain of their conduct when it becomes known and may also feel some genuine remorse for their offenses.

Looked at from afar, these may seem like two very minor variations on the central theme of success and ambition carried to extremes. We believe, however, that when criminality is better understood, both general and specific motivations will play an important part. To assume that each offense must have its own unique understanding is unwarranted; but going to the other extreme of searching for a single explanation is to ignore the most important lessons that the detailed study of particular kinds of crime can teach us.

IX. CONCLUSION

When Edwin H. Sutherland coined the term “white collar crime,” he gave voice to an interest that has been pursued more in political and rhetorical terms than through sustained empirical research. Fortunately, this condition is changing. Braithwaite’s recent review leaves the strong impression that more
has been learned in the past five to ten years than in the previous thirty.\footnote{Braithwaite, \textit{White Collar Crime}, 11 \textit{Annual Review of Sociology} 1-25 (1985).} We hope that our own work, although limited to the study of convicted individuals, can help extend this new-found knowledge. For us, the factors that most clearly differentiate white collar from common crimes are the complexity and the degree of victimization, and especially for those offenses of greatest magnitude, the positions occupied by those who commit them. Within the general category of federal white collar crime, there is a hierarchy with most antitrust and securities fraud offenses at the top, and most false claims, credit fraud and bank embezzlement at the bottom. Finally, we are struck by the inadequacy of efforts to shed light on white collar crime by concentrating either on the social background of the offender, or on the nature of the crime, without exploring closely how these two critical ingredients fit together.

\footnote{Braithwaite, \textit{White Collar Crime}, 11 \textit{Annual Review of Sociology} 1-25 (1985). Braithwaite's review includes citations to the most important works in the past decade, including that of Clinard and Yeager, Coffee, Fisse, Geis and Goff, Hagen, Meier and Short, Nagel, Reiss, and Braithwaite himself—to name just a few of those not cited elsewhere in the present Article.}