

# White-Collar Crime and Criminal Careers

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 **CAMBRIDGE**  
UNIVERSITY PRESS

PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE  
The Pitt Building, Trumpington Street, Cambridge, United Kingdom

CAMBRIDGE UNIVERSITY PRESS

The Edinburgh Building, Cambridge CB2 2RU, UK

40 West 20th Street, New York, NY 10011-4211, USA

10 Stamford Road, Oakleigh, VIC 3166, Australia

Ruiz de Alarcón 13, 28014 Madrid, Spain

Dock House, The Waterfront, Cape Town 8001, South Africa

<http://www.cambridge.org>

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First published 2001

Printed in the United States of America

*Typeface* ITC New Baskerville 11/13 pt.      *System* QuarkXPress [BTS]

*A catalog record for this book is available from the British Library.*

*Library of Congress Cataloging in Publication Data*

Weisburd, David.

White-collar crime and criminal careers / David Weisburd, Elin  
Waring.

p. cm. – (Cambridge studies in criminology)

Includes bibliographical references and index.

ISBN 0-521-77162-5 – ISBN 0-521-77763-1 (pbk.)

1. White collar crimes. 2. Commercial criminals. I. Waring, Elin J.

II. Title. III. Series.

HV6768.W44 2001

364.16'8 – dc21

00-031260

ISBN 0 521 77162 5 hardback

ISBN 0 521 77763 1 paperback

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## White-Collar Crime and Criminal Careers

When Edwin Sutherland coined the term “white-collar crime” in his address to the American Sociological Society in 1939, he used the concept to challenge conventional stereotypes and theories.<sup>1</sup> In 1939, crime was generally seen as the work of disadvantaged young men from broken homes and decaying neighborhoods. Through films and books, the criminal was portrayed as a tough guy growing up on the wrong side of town. He was either to be saved by the church or the community or to be condemned to a sad fate determined by the difficult circumstances in which he was raised.

Such stereotypes were not limited to popular images of criminality. In a series of enduring empirical inquiries, sociologists at the University of Chicago in the 1920s and 1930s emphasized the link between social disorganization and poverty in areas within a city and high rates of criminal behavior (e.g., see Thrasher, 1927; Shaw, 1929). Their work, which continues to have an important place in American criminology (e.g., see Reiss and Tonry, 1986), served to focus attention on crimes of the lower classes. When Sutherland gave his ground-breaking speech to the American

<sup>1</sup> The address was published the following year in the *American Sociological Review* under the title “White Collar Criminality” (Sutherland, 1940).

Sociological Society, scholars and lay people alike saw poverty or conditions associated with poverty as intricately linked to criminality.

Sutherland challenged the traditional image of criminals and the predominant etiological theories of crime of his day. The white-collar criminals he identified were often middle-aged men of respectability and high social status. They lived in affluent neighborhoods, and they were well respected in the community. Sutherland was not the first to draw attention to such criminals. In earlier decades, scholars such as W.A. Bonger (1916) and E.A. Ross (1907) and popular writers such as Upton Sinclair (1906) and Lincoln Steffens (1903) pointed out a variety of misdeeds by businessmen and elites. However, such people were seldom considered by those who wrote about or studied crime and were not a major concern of the public or policy makers when addressing the crime problem.

Sutherland (1940) argued that the predominant conceptions and explanations of crime in his day were “misleading and incorrect” because they were developed from “biased samples” of criminals and criminal behavior (see also Sutherland, 1945, 1949). He noted that “vast areas of criminal behavior of persons not in the lower class” had been neglected in prior studies (1940, p. 2). In Sutherland’s view, poverty and social disorganization could not be seen as the primary causes of crime, if crime could also be found among people who grew up in “good neighborhoods and good homes” and lived in situations of authority and privilege. He believed that much could be learned about the crime problem by focusing on the category of white-collar crime. He declared that white-collar crime was not an isolated phenomenon, but a significant part of the landscape of criminal behavior.

Despite Sutherland’s recognition of the importance of the white-collar crime category, it never achieved the centrality in criminological study that he proposed. White-collar crime has for the most part been treated as a deviant case, invoked primarily to provide a contrast to the common crimes and street criminals that continue to dominate research and theory about crime. In this book, we seek to return the white-collar crime category to the mainstream of criminological thought. Our specific focus is on



what criminologists term *criminal careers* (see Blumstein et al., 1982, 1986). Much research on crime has focused on general portraits of crime in the population. The concern of such studies is with aggregate crime rates in communities or regions of the country or the relative changes in crime rates over time. The criminal career approach, in contrast, “seeks to analyze the activity – the careers – of the individuals who commit criminal offenses” (Blumstein et al., 1986, p. 1). It directs attention to the factors that lead to participation in crime, the nature and seriousness of criminal behavior of active offenders, and the duration of their involvement. In this context, the criminal career approach allows scholars and policy makers to focus directly on the causes of criminality, and potential methods of effective prevention and treatment of crime (Farrington et al., 1986).

Though the study of criminal careers has come to occupy a central place in the study of crime, criminologists have largely overlooked the criminal careers of white-collar offenders. For study of criminal careers, as with study of other crime and justice problems, the primary focus of researchers has been upon street crimes and common criminals. The fact that white-collar criminals have been assumed to be one-shot offenders (e.g., see Edelhertz and Overcast, 1982; Wheeler, Mann, and Sarat, 1988) has reinforced this bias. Even though there is a long tradition of scholarship dating back to Sutherland (1949) that recognizes that white-collar criminals, like common criminals, may repeat their involvement in law violating acts, most scholars (including Sutherland) have assumed that white-collar criminals are unlikely to have multiple contacts with the criminal justice system. Because such contacts have formed an important part of the study of criminal careers (Blumstein et al., 1986), white-collar crime has not been seen as a fruitful area of concern for criminal career researchers.

Our study contradicts this common assumption about white-collar criminals. In the chapters that follow we show that a substantial number of offenders who are convicted under white-collar crime statutes in the United States federal courts have multiple contacts with the criminal justice system. This fact led us to explore the problem of white-collar criminal careers, allowing

us to examine white-collar crimes and criminals using a different approach than has traditionally been applied by other white-collar crime scholars. It also provides us with an opportunity to critically examine assumptions about criminality and criminal careers that have been developed primarily in the context of studies of street criminals.

In taking this approach we are led to a portrait of crimes and criminals that is very different from that which has traditionally dominated criminology. Criminologists have generally focused on the ways in which criminals differ from those not involved in crime. As Thomas Gabor (1994, p. 14) writes:

Traditionally, criminologists have attempted to explain why some people become criminals and others do not. Some have attributed the apparent differences between criminals and the law-abiding to innate or genetic factors, others to personality differences, and still others to social circumstances. Whatever their persuasion, these traditionalists shared the assumption that there were clear differences between criminals and the rest of society. The traditional goal of research and theory in criminology, therefore, has been to identify these differences as precisely as possible.

The emphasis that traditional scholarship has placed on distinguishing between criminals and noncriminals adds little to understanding the involvement in crime of many of those we study. Rather, our data suggest the importance of the immediate context of crime and its role in leading otherwise conventional people to violate the law.

### **White-Collar Crime and Criminal Careers**

This book centers both on description of the criminal careers of white-collar offenders and on the implications that the study of white-collar criminal careers has for understanding criminality more generally. The fact that white-collar criminals, like common crime offenders, often have multiple contacts with the criminal justice system raises a number of intriguing questions. Who are these repeat white-collar criminals, and how are they different from white-collar offenders who have only one recorded contact

with the criminal justice system? How are their criminal careers similar to or different from offenders found in more traditional crime samples?

It might be, for example, that repeat white-collar offenders, as defined by the criminal justice system, are similar to other white-collar criminals, but are just unlucky enough to be caught more than once. This would be consistent with research on corporate offending which suggests that such criminality is part of an established pattern of behavior for law violators (Clinard and Yeager, 1980; Braithwaite, 1982; Sutherland, 1949). On the other hand, some might argue that those convicted of white-collar crimes who have multiple contacts with the criminal justice system are not likely to be white-collar criminals at all. An example consistent with this argument would be a criminal who is a high-level manager of an illegal drug distribution network who was prosecuted for a white-collar crime, such as tax evasion, merely because other prosecutorial avenues were too difficult.

The occurrence of repeat criminality in a sample of offenders convicted of white-collar crimes also raises the issue of whether these offenders differ from street crime offenders in the basic parameters of their criminal careers. As we have already noted, white-collar offenders have generally been assumed to have infrequent contacts with the criminal justice system. In fact, do white-collar offenders have official criminal histories of much lower frequency than street crime offenders? Do they start and end their criminal careers later in the life course than do other types of offenders? If common stereotypes of white-collar offenders hold true, we would not expect to find that such criminals are active offenders early in life. However, we might expect that they would continue to reoffend much later in life than street crime offenders. This in turn would imply that the duration of criminal careers of white-collar offenders may be particularly long. Prior studies offer little insight into these concerns.

The question of specialization is particularly important in the study of white-collar criminal careers. Does it make sense, for example, to speak of "white-collar criminals" if such offenders are likely to engage in common criminal behavior as well as white-collar criminality? It would certainly alter the prevailing image of

white-collar crime if white-collar offenders were found, for example, to commit more serious violent crimes at other points in their criminal careers.

The study of white-collar crime and criminal careers offers a special opportunity for critically examining the appropriateness of the concept of career for understanding the development of criminal activities among offenders. Unlike most street criminals, white-collar offenders are often employed and may have conventional career histories. How does criminality intersect with those careers, and to what extent does it appear to be an important part of their development? Similarly, does repeat criminality among white-collar criminals provide evidence of systematic development of paths to crime, or does it suggest a series of random and chance events that are a small part of the life course?

What of the relationship between the social backgrounds and histories of offenders and involvement in crime on the one hand, and the relevance of situational characteristics of crime on the other? Does involvement in crime appear to be related to characteristics that are common to white-collar criminals but not others in similar social and economic circumstances? Does the criminality of white-collar offenders appear as a natural outcome of a life that is typified by deviance more generally? Or conversely, does it appear for these offenders that “opportunity makes the thief” (Felson and Clarke, 1998) – that white-collar criminals are conventional people who confront specific situational opportunities that lead them to crime? Or must we distinguish among different types of offenders who commit white-collar crime?

Some criminologists argue that it is essential to examine very specific categories of crime and deviance, such as car theft or house-hold burglary, rather than overarching groupings such as white-collar crime, because there may be important differences between them (Clarke, 1980, 1983, 1992, 1995; Clarke and Cornish, 1985). Thus, we might find very different pathways leading to involvement in crime among different types of offenders in our sample. Are such differences related to the types of crime that offenders commit or to the frequency of offending? What can we learn more generally about crime and criminality from the different types of offenders identified in a white-collar crime sample?

At least since the time Sutherland began his study of white-collar criminals there has been concern that high-status offenders avoid the most severe sanctions in the justice system (Wheeler et al., 1982; Meier and Short, 1982; Clinard and Yeager, 1980; Watkins, 1977). In recent years, such concerns have led in the federal sentencing system to increased severity in the penalties for white-collar crimes (U.S. Sentencing Commission, 1987) and to a much larger number of such offenders being sentenced to imprisonment (U.S. Sentencing Commission, 1991). For the most part, these policies have been developed without an understanding of how these changes will impact the potential for future criminal conduct among sanctioned white-collar criminals. Do criminal sanctions decrease the likelihood of reoffending, or the timing or seriousness of reoffending, of those convicted of white-collar crimes? Or do criminal sanctions “backfire” (Farrington et al., 1986; Sherman et al., 1986; Petersilia and Turner, 1986; Bridges and Stone, 1986) in a white-collar crime sample and lead to more serious involvement in crime? Finally, do different types of sanctions – for example, prison or fines – have distinct types of influences on the criminal careers of convicted white-collar criminals?

### **Defining White-Collar Crime and Sampling White-Collar Criminals**

In order to provide insight into these questions, we sought to carefully examine the social and criminal histories of a sample of white-collar offenders. We recognize at the outset, however, that our view of white-collar crime and criminal careers is strongly influenced by the nature of the white-collar criminals we study. Therefore, we now focus in detail on our approach to the problem of white-collar crime and the sample of white-collar offenders that we study.

#### *Defining White-Collar Crime*

The absence of a precise definition of white-collar crime has plagued white-collar crime scholars from the outset (Schlegel and

Weisburd, 1992). The confusion began with Sutherland himself (Geis, 1992; Coleman, 1992; Wheeler, 1983). Sometimes he stressed crimes committed by individuals of high status, while at other times he stressed crimes carried out in the course of one's occupation (e.g., see Sutherland, 1939, 1945). In his major empirical contribution to study of white collar crime, he focused on crimes committed by organizations or by individuals acting in organizational capacities (Sutherland, 1949). Although he used various definitions, the most frequently cited definition draws attention both to the established social standing of white-collar criminals and to the special opportunities for crime that come from specific occupational positions. He wrote: "White-collar crime may be defined approximately as a crime committed by a person of respectability and high social status in the course of his occupation" (Sutherland, 1949, p. 9).

Sutherland's definition established status, occupation, and organization as central features of white-collar crime study. However, in the more than half century since he coined the term, it has come to have different meanings depending on the research problem encountered or the theoretical context explored. For some, the concept is centered squarely in the activities of the most elite and powerful members of society. For example, Geis (1992, p. 47) argues that white-collar crime involves the "abuse of power by persons who are situated in high places where they are provided with the opportunity for such abuse." For others, white-collar crime refers not to the social positions of offenders but rather to the context in which white-collar crimes are carried out or to the methods used in their commission. This latter approach is reflected in early studies of occupational crime, such as Earl Quinney's (1963) examination of prescription violations by retail pharmacists, or Frank Hartung's (1950) study of violations of wartime regulations in the meat industry (see also Newman, 1958). It is also reflected in Herbert Edelhertz's influential definition of white-collar crime, as "an illegal act or series of illegal acts committed by nonphysical means and by concealment or guile, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage" (Edelhertz, 1970, p. 3).

While an array of definitions of white-collar crime has been offered since Sutherland coined the term (see also Reiss and Biderman, 1980; Shapiro, 1990), they have in common an underlying theme that is linked to Sutherland's original interest in the concept. Whatever the definition proposed, scholars have tried to define a category of crimes and criminals that provides a clear contrast to the common crimes and street criminals that generally attract the attentions of lay people and scholars. High social status is not a trait that is normally associated with crime, nor indeed is white-collar occupational status. Street criminals often use guns or knives to steal from their victims, they do not rely on paper instruments or computers as methods for committing their offenses. In some basic sense, the different definitions of white-collar crime intersect one with another. People of higher social status are those most likely to have white-collar occupational position, and such people are more likely to have the opportunity to commit crimes that involve nonphysical means. The question, however, is how broad the boundaries of white-collar crime study should be. While the differing definitions have much in common, they draw the dividing line between white-collar and other crime in different places.

Debate over the boundaries of white-collar crime study has gained new intensity as a result of a series of empirical studies that examine the types of people that are prosecuted for what are ordinarily defined as white-collar crimes. These studies suggest that much of what has been assumed to be white-collar crime is committed by people in the middle rather than upper classes of our society (e.g., see Croall, 1989; Levi, 1987; Weisburd et al., 1991). Many of the "fraudsters" who manipulate stocks are very far from elite status. Most of those who are prosecuted for crimes like bribery, tax fraud, or bank fraud are rather average in their social backgrounds and positions. The predominance of the more ordinary type of white-collar offender may be, to some extent, a function of the vagaries of prosecution rather than the realities of offending. Nonetheless, it is not a trivial fact that most of those prosecuted for so-called white-collar crimes have little in common with the powerful and wealthy individuals who are often conjured up as images of the typical white-collar offender. However, it is

also important that they differ at least as sharply from the lower-class criminals that are generally thought of when scholars or lay people discuss the crime problem.

These white-collar criminals differ in status and position from more elite white-collar offenders, and their crimes are frequently as mundane as their social backgrounds. But it would be misleading to overstate the differences in their opportunities to commit costly and complex white-collar illegalities. It is not necessary to be a Fortune 500 corporate executive to develop a costly stock or land fraud. Such crimes are often committed in small firms or by employees who hold less powerful positions in larger ones. Antitrust violations involving millions of dollars are often committed by local businessmen or women. Frauds netting millions of dollars are frequently perpetrated by middle-level bureaucrats in public and private agencies who have access to large sums of money through government aid programs.

Should these middle-class white-collar criminals be included within the boundaries of white-collar crime study? Some scholars have suggested that such offenders are a useful subject of inquiry, but that they are too far afield from Sutherland's original conception to add much to our understanding of the problem of white-collar crime (e.g., see Geis, 1992; Shover, 1999). The question is whether it is useful to begin with an understanding of white-collar crime that allows us to speak not only of the rich and powerful white-collar criminals, but also of those offenders much closer to the middle of our society who have recently become the subject of scholarly attention. A simple response to this question would note that were we to narrow the scope of white-collar crime research to the most elite white-collar criminals, we would exclude the bulk of those people who are convicted for so-called white-collar crimes. Though from the outset scholars have contended that white-collar criminals often escape detection and prosecution, it seems unreasonable to us to argue that most offenders who are prosecuted for white-collar crimes should be excluded from systematic study.

Beyond this we believe that Sutherland's emphasis on elite status was in part a function of the different opportunity struc-



ture for white-collar criminality that existed in his day.<sup>2</sup> It was natural for Sutherland to focus on businessmen in lofty positions when examining the problem of white-collar crime because relatively few Americans beyond these elite men had any opportunity for committing such illegalities. But changes in our society since then have placed the opportunity for white-collar crimes in the hands of a much broader class of Americans, most of them people who were excluded from these activities in the past. In part, the rapid growth of white-collar jobs in America in the last fifty years has spawned such changes (Bell, 1973). But perhaps even more important are the dramatic differences in the way modern society functions. The advent of the computer, for example, gives large numbers of people access to the documents and transactions that are so much a part of white-collar illegalities. The growth of modern state bureaucracies has placed millions of dollars in the hands of people who would never have had access to such sums in the past.<sup>3</sup> The development of a credit economy has also expanded the opportunities for such crimes.

### *A Broad and Heterogeneous Sample of White-Collar Offenders*

The sample we use for studying white-collar criminal careers takes this more inclusive approach to the problem of white-collar crime. It was designed to identify the broad range of white-collar crimes and criminals prosecuted in American federal courts. The sample was originally selected by researchers at Yale Law School working under the leadership of Stanton Wheeler (see Wheeler, Weisburd, and Bode, 1988; Weisburd et al., 1991). We benefit from the

<sup>2</sup> For a more in-depth discussion of these issues see Weisburd et al., 1991, Chapter 7.

<sup>3</sup> As federal programs have expanded over a wider range of activities, the federal government has become the source of financing for a wide variety of purposes. As Weisburd et al. (1991, p. 11) note, "this has led to the use of government programs as a locus for the commission of financial fraud." While the sums involved in such crimes may be large, the perpetrators are often middle-class people, many times owners of small businesses (Weisburd et al., 1991).

careful sampling techniques and rich data collected in that study. At the same time, we add detailed information on the number, timing, and types of other criminal events attributed to these offenders both before and after the offense that was the focus of the Yale study. Because our sample is drawn from the Yale Law School study, we describe below the approach used by Wheeler and his colleagues to identify their sample and the data collected.

White-collar crime was defined by Wheeler, Weisburd, and Bode (1982, p. 642; see also Shapiro, 1981) as “economic offenses committed through the use of some combination of fraud, deception, or collusion.” They examined eight federal crimes that fit, in their statutory descriptions, this broad definition: antitrust offenses, securities fraud, mail and wire fraud, false claims and statements, credit and lending institution fraud, bank embezzlement, income tax fraud, and bribery.<sup>4</sup> The sample was selected with the intent of providing “a broad and heterogeneous view of the white-collar criminal activity that is prosecuted in the Federal Courts” (Weisburd et al., 1991, p. 11). The Yale researchers noted that they identified crime categories “that would most frequently be identified by persons as ‘presumptively’ white-collar” (Wheeler et al., 1982, p. 643).

The original sample was drawn primarily from cases processed in seven federal judicial districts during fiscal years 1976–1978. The districts were chosen in part to provide geographic spread, in part because they were being examined in other studies, and in part because some of them were known to have a substantial amount of white-collar crime prosecution. The districts (and their central cities) are: Central California (Los Angeles), Northern Georgia (Atlanta), Northern Illinois (Chicago), Maryland (Balti-

<sup>4</sup> For a description of the statutory categories examined see Appendix A. The titles and sections of the main statutes examined are: Antitrust, 15 USC 1-3; Securities, 15 USC 77-78; Mail and Wire Fraud, 18 USC 1341 and 18 USC 1343; False Claims and Statements, 18 USC 287 and 18 USC 1001; Credit and Lending Institution Fraud, 18 USC 1014; Bank Embezzlement, 18 USC 656; Income Tax Fraud, 26 USC 7201, 26 USC 7203, and 26 USC 7206; Bribery, 18 USC 201.

more), Southern New York (Manhattan and the Bronx), Northern Texas (Dallas), and Western Washington (Seattle).

A stratified random sample of a maximum of thirty convicted defendants was selected from each offense category in each of these seven districts.<sup>5</sup> The sample was stratified to allow a sufficient number of cases of relatively less common, but theoretically important, white-collar crimes such as bribery, antitrust offenses, and securities frauds.<sup>6</sup> A supplementary sample of securities and antitrust offenders was also collected. This supplementary sample included all offenders convicted of these crimes during the three-year sample period from all United States federal judicial districts. In this and subsequent chapters we refer to the crime that led to selection into the sample as the “criterion” offense.

The database compiled in the original research was created with specific information about offenders drawn from presentence investigation reports (PSIs). Like other matters of systematic criminal record keeping, PSIs are routinely filled out for those

<sup>5</sup> For specific offenses in specific districts, thirty cases were not available for sampling. In this situation the Yale researchers included all available offenders in the sample. See Appendix A for a description of the sampling frame.

<sup>6</sup> The sample thus includes more securities, antitrust, and bribery cases and fewer bank embezzlement and mail and wire fraud cases than would be expected from a simple random sample. However, oversampling resulting from stratification was constrained by the fact that rarer offenses often did not meet the sampling threshold (see footnote 5). This is illustrated by comparing the distribution of offenses in the sample with that in the national population of cases in 1978 (the first year that the Federal Judicial Center reports separate out felony from other cases). Caution should be used in the case of antitrust offenses, because many corporate offenders are included in the Federal Judicial Center statistics: [S – sample; P – national population] Bribery S – 7.7% P – 3.1%; Income Tax S – 19.2% P – 17.9%; Bank Embezzlement S – 18.3% P – 21.3%; Credit and Lending Institution Fraud S – 14.4% P – 9.6%; False Claims and Statements S – 14.4% P – 15.2%; Mail and Wire Fraud S – 17.4% P – 26.4%; Securities Fraud S – 6.1% P – 2.8%; Antitrust S – 2.5% P – 3.5%.

who pass a certain threshold in the criminal justice system, namely, conviction in a federal court. At the time of the study, presentence reports provided a particularly rich source of information not only on the nature of the crimes committed but also for understanding the offenders prosecuted. Before a major change in the Rules of Criminal Procedure that eliminated or minimized much of the social history information in the PSIs went into effect in 1987 (see Findley and Ross, 1989), the report was required to include “any prior criminal record of the defendant, information about his characteristics and financial condition, information about circumstances affecting his behavior, and any other information required by the court” (Fennell and Hall, 1980).

A sense for the comprehensive nature of the document can be gained from Fennell and Hall’s description of preparation of presentence investigations at that time (Fennell and Hall, 1980, pp. 1623–1625):

The line probation officer traditionally starts the presentence investigation by conducting an in-depth interview with the defendant at the probation office. In this interview, the officer attempts to establish a cooperative relationship with the defendant to obtain the defendant’s version of the offense and arrest as well as all other relevant information. After the interview, the probation officer contacts the United States Attorney and the investigating agents involved in the case to obtain their version of the offense. These inquiries often uncover additional information about the defendant’s activities that goes beyond the scope of the instant offense.

. . . Insight into the defendant’s social stability is sought by contacting social service agencies with which the defendant has dealt, present and former employers, family members and individuals in the community who may know the defendant. The officer also has access to any recorded contacts the defendant has had with the military, law enforcement authorities, educational institutions, banks and credit bureaus. Finally, the probation officer obtains available medical and clinical evaluations of the defendant’s mental and physical health. After most of this information is obtained, the probation officer reinterviews the defendant in the

defendant's home, with the hope that the defendant will be more candid in a familiar setting. At this time, the probation officer usually confronts the defendant with any information that differs substantially from his original statements, and attempts to resolve the discrepancies.

The fact that the PSIs were subject to challenge by both defense and prosecution suggests that the "facts" provided are often reliable.<sup>7</sup> Nonetheless, a number of legal scholars had criticized the format of PSIs during the period these data were collected because the information included often did not meet the evidentiary standards generally required in legal proceedings (e.g., see *Yale Law Journal*, 1982). Sometimes the probation officers reported unsubstantiated rumors and hearsay, and the information included is, of course, filtered through the eyes of the probation officers themselves. While the wide range of information collected in the presentence investigations raised important procedural and legal concerns, the availability of the PSIs (ordinarily not provided to researchers at that time) allowed Yale researchers to develop an unusually detailed data base on the criminals they studied. Our access to these data, as well as the PSIs from which they are drawn, provided us with a rich source from which to begin our investigation into white-collar criminal careers.

While the sample was carefully devised and the data source unusually detailed, it is necessarily limited in some respects (see Weisburd et al., 1991, pp. 17–20). The selection of cases draws offenders who have been prosecuted for felony offenses in federal courts. Accordingly, white-collar offenders who have only been prosecuted in state courts or those who have been prosecuted only under administrative or civil law are not included in the sample. The sample is also drawn from a population of convicted

<sup>7</sup> Nonetheless, Fennell and Hall (1980) report that in practice the reports were often not shared with the defense. Moreover, we recognize that in going beyond reporting of "facts" about the offense or the offender's background, one can be much less sure of the PSIs accuracy.

defendants. This means that we also did not study white-collar offenders who had fallen under suspicion but had never been indicted and successfully prosecuted.<sup>8</sup>

We think that the choice of federal courts as a hunting ground for white-collar criminals was a good one, because it is generally recognized that white-collar crimes constitute a much larger proportion of prosecutions there than in state or local courts. However, the exclusion of civil and administrative violations as criteria for sampling and the inclusion of only convicted defendants raises more substantive concerns. How is our portrait of white-collar criminals biased by the failure to include offenders prosecuted for administrative or civil law violations, or those prosecuted for crimes but not found guilty?

There is evidence that those who are highest up the organizational and status hierarchies are somewhat less likely to be criminally prosecuted for white-collar crimes (e.g., see Shapiro, 1984, 1985). This would suggest that the sample is less likely to include the most elite white-collar crime offenders than would a sample that was drawn from a universe of civil and administrative law violators. But this bias should not be overstated. Those who observed prosecutors during the late 1970s and early 1980s found that they were more likely to target more serious crimes for criminal prosecution and that offenders of higher status were more likely to commit such crimes in the first place (Benson et al., 1988; Shapiro, 1985).

<sup>8</sup> There are also a number of other federal white-collar offenses that arguably might have been included in selecting a broad-based sample of white-collar crime. Perjury, bankruptcy fraud, and conspiracy are examples of these. Yale law school researchers excluded these, as well as other crime categories, in defining the sample because they were seen as "deficient" in one respect or another (Weisburd et al., 1991, p. 18). For example, it was suspected that perjury was used often to prosecute organized crime figures, conspiracy was most often a secondary crime and thus was already included in many cases, and crimes like bankruptcy fraud were prosecuted rarely in the districts studied. The sample also does not draw environmental or occupational safety and health violations, because these for the most part became criminal offenses only after the sample was selected.

What of the impact of the inclusion of only those who had been successfully prosecuted? Some who have studied white-collar crime prosecution have suggested that powerful business defendants are able to intervene and to delay enforcement efforts (e.g., see Coleman, 1989). Others argue that the professional aspirations of prosecutors may lead them to be more aggressive against more substantial white-collar crime cases (e.g., see Katz, 1979; Benson et al., 1988), which generally include more elite and powerful defendants (Weisburd et al., 1991). According to Kenneth Mann (1985), who conducted a study of the white-collar crime defense bar at the time these data were collected, the underlying criminal conduct of white-collar crime defendants in the cases that lead to conviction is often similar to the conduct of those who go free. The differences lie mainly in the vagaries of the evidentiary traces that are left behind; these traces enable some cases to be successfully prosecuted and others not.

Despite the limitations that we have described, this sample provides a unique opportunity for examining the social and criminal careers of a broad range of white-collar offenders. At the same time, it is important to note at the outset that the white-collar crimes included in the sample have a much more mundane quality than is often associated with white-collar crime in the popular imagination or in academic studies that focus on the most consequential white-collar crime cases. While the sample contains many examples of offenders who commit dramatic and complex frauds, the large majority of the white-collar crimes, including many of those committed by those of the highest status, are undramatic, and similar crimes could be committed by people of relatively modest social status.<sup>9</sup> These offenses differ systematically from common crimes (Weisburd et al., 1991). Nonetheless, they often have a common, everyday character. As Weisburd et al. (1991, p. 171) note:

Their basic ingredients are lying, cheating, and fraud, and for every truly complicated and rarified offense there are many others that are simple, and could be carried out by almost anyone who can read, write and give an outward appearance of stability. The

<sup>9</sup> See Weisburd et al. (1991, pp. 62–73).

offenders that got the most notoriety in Sutherland's day were Ivar Krueger and Samuel Insull, while today's most noted defendants are Ivan Boesky and Michael Milken. But now, just as in Sutherland's day, these cases are the exception, not the rule. If one wants to understand the full range of white-collar crime offending, one has to look beyond the most dramatic cases.

### **Tracking Criminal Careers**

The original Yale database did not include detailed information on the nature or form of the offenders' criminal histories. Reflecting what was believed about white-collar criminals – that they were likely to have little or no official history of prior offending – the researchers decided to collect only very general information on criminal histories, such as the total number of arrests or most serious prior crime reported. However, when the research was complete, it was clear that the offenders studied had, on average, much more serious criminal records than had been expected (Weisburd et al., 1991, p. 66):

. . . we should stress here that these white-collar criminals evidence prior criminality to a much greater extent than most practitioners and scholars would have expected. . . . Indeed as a group they are approximately twice as likely to have an arrest record as is the national population.

Over forty percent of the sample had a prior arrest reported in the PSIs, and more than one-third had a prior conviction. These results were not a fluke of the particular sample identified. Benson and Moore (1992) report very similar results for a study of white-collar crime in eight different federal judicial districts. They found that almost forty percent of white-collar offenders (including those convicted of bribery, bank embezzlement, income tax evasion, false claims and statements, and mail fraud) had prior arrests reported in their presentence investigations.

We sought both to gain more reliable data on prior criminality and to extend our view of criminal histories more than ten years beyond the "criterion offense" that had originally identified



sample members.<sup>10</sup> The first critical decision in developing such information was the choice of a measure of criminality. We decided at the outset that it was impractical to collect self-report measures, though these had the potential to add significantly to our understanding of paths to crime for white-collar criminals. It was unlikely that, after such a long period of time, we would be able to track down a very large proportion of the original sample based on information available in the presentence investigations. Moreover, because our interest was in documenting criminal involvement, we felt that many individuals would be unable to accurately recollect the specific timing of criminal activities that had occurred many years in the past. Of course, this assumes that they would be cooperative in providing such information in the first place.<sup>11</sup>

Turning to official measures of criminality, we decided to focus on arrests for two main reasons. First, although we cannot determine when actual criminal behavior occurs, the best measure is generally one which comes closest in time to offending (Maltz, 1984). Second, although all measures of criminality include a substantial degree of error, that of a false positive (including some events as crimes that are not instances of offending) is generally considered to be less serious than that of a false negative (excluding some events as crimes because of attrition in criminal justice processing from arrest to conviction) (Maltz, 1984; Blumstein et al., 1986). Arrests are closer in time to the actual criminal events than other official measures of offending. Using arrests as an

<sup>10</sup> Because the sample includes offenders convicted over a three-year period, the follow-up time for each offender varies. Nonetheless, we have at a minimum a 126-month potential follow-up period (the actual follow-up period may be affected by the defendant's death; see p. 23) for all subjects in the study. With the exception of "time to failure" analyses in Chapters 5 and 6, we use a fixed follow-up period of 126 months in our analyses.

<sup>11</sup> Our reliance on official histories, rather than on self-reported activities, means that we also lack information on the offenders' personal histories over time including, for example, such items as changes in marital status following completion of the PSI.

official indicator of criminal behavior, we are, in turn, less likely to exclude potential crimes from our investigation.

While we believe that an arrest provides the best official measure of criminality, we recognize that it may be misleading at times to use arrests as indicators of the underlying criminal behavior of offenders or even the underlying patterns of criminal careers (see Kitsuse and Ciciourel, 1963; Wheeler, 1967; Elliott, 1995). Many offenders never get caught, and others get caught at different rates; for example, there are generally different estimates given of the relationship between recorded arrests and actual offenses depending on the type of offense examined (Blumstein et al., 1986). Despite these concerns, much of the research on the criminal careers of street criminals has been based on use of official data such as arrests (Elliott, 1995). As we seek to contrast this white-collar crime sample with more traditional studies, we deem arrest data particularly relevant. Moreover, our access to the presentence investigations allows us (as we describe later) to compare the official reports of criminality with the probation officers' interviews and overall assessment of the offenders studied.

Of course, a major concern in comparing arrests in this white-collar crime sample with arrests in other samples is whether they measure similar phenomena. It may be, for example, that the meaning of an arrest for a white-collar crime is different than that for a street crime. Prosecutors, not the police, are usually the primary investigators of white-collar crime (Katz, 1979). White-collar criminals may also be "arrested" much later in the investigative process than are street criminals, often because white-collar crimes are more difficult to unravel and many times do not have identifiable victims (Braithwaite and Geis, 1982). Such offenders may not be arrested at all if prosecutors decide to use civil actions instead of a criminal prosecution (Mann, 1992). We might, therefore, expect official records to underestimate the frequency of white-collar crime events in an offender's criminal career more seriously than is the case for common criminals (see Horney and Marshall, 1992).

Moreover, the fact that white-collar crimes generally are of longer duration than street crimes increases the potential for misunderstanding criminal careers in a sample of white-collar offend-