The final article, by Brinnall, illustrates and amplifies points made by Katz. Brinnall explains how resources supplied by the federal government have served to release local initiative in the prosecution of crimes that might otherwise have gone unchecked. Katz and Smith make it quite clear that the needed capacities and interests exist to make white collar crime much more difficult to perpetrate, or to perpetuate without punishment, than it now is. But it is far from clear that these capacities and interests are or will be assured of continued freedom of action.

NOTES


7. See also Marshall B. Clinard, Peter C. Yeager, Jeanne Brissette, David Petrashek, and Elizabeth Harries, Illegal Corporate Behavior. Washington, DC: USDJ/LEAA/NILECJ, 1979. A study of law violations by the 582 largest publicly owned corporations in the United States, this is the first large-scale effort to extend Sutherland’s original effort.

THE SOCIAL MOVEMENT AGAINST WHITE-COLLAR CRIME

JACK KATZ

In an unpredicted movement over the last decade, “white-collar crime” rose to compete with “street crime” in American consciousness of the crime problem. One indicator of the change has been a diminution of efforts to exploit for political benefit failure of enforcement against common crime. In the 1960s, the books of even liberal politicians often focused on street crime and gave scant attention to white-collar crime.1 Now ex-members of a fallen “law-and-order” administration flood book sellers with fact and fiction on their experiences in white-collar crime. In the 1968 election, the alleged softness on street crime of Attorney General Ramsey Clark became an issue that threatened to override bread-and-butter differences between the candidates. In the 1976 election, the pardon of Richard Nixon, along with the earlier Republican failures to prosecute white-collar crime, played an analogous role. We may now begin to speculate on the effects on the 1980 elections of the Marston “affair”; the prosecution of President Carter’s first budget director, Bert Lance, for bank fraud; allegations of a cover-up after Chappaquiddick; and the trial of John Connolly for corruptly receiving payments from dairy interests.

The change in the last 10 years has been striking because the earlier emphasis on street crime was so strong. In the early and mid-1960s, Presidential commissions drew on the academic community to an unprecedented degree to study juvenile delinquency, urban riots, and violence against political leaders. In the late 1960s and early 1970s, grand jury investigations and prosecutions riveted public attention on clashes between police and war protesters, race leaders, and

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political radicals. In political rhetoric, in front page news, and in academic focus, the criminal was an outsider attacking "the Establishment" from "the streets."

The change has also been striking because there had been relatively little attention to white-collar crime before the 1970s. To be sure, from 1958 to 1968 there were several dramatic instances of triumphant white-collar crime law enforcement. Massive publicity was given to the criminal prosecution of Westinghouse and General Electric executives for a price-fixing conspiracy in the heavy electrical equipment industry. Early in their administration, the Kennedys prosecuted a prominent Presidential appointee, for tax crimes (James Landis) who had been dean of the Harvard Law School and two U.S. Attorneys of the Eastern District of New York (one acting, Elliott Kahaner; the other, Judge Vincent Keogh, was the brother of a powerful Congressman and had been a prosecutor under Franklin Roosevelt) for promoting judicial bribery in a criminal case. Robert Morgenthau, the U.S. Attorney in Manhattan, became the first prosecutor to make the prosecution of white-collar crime a widely recognized hallmark of his tenure. President Johnson initiated "Operation Snowball" in 1964, a nationally coordinated campaign to prosecute the use of corporations for illegal campaign contributions. There were celebrated charges of corruption against close associates of the Presidents (Sherman Adams, Billie Sol Estes, Bobby Baker). Yet these were isolated events. No patterned expansion of general movement in law enforcement sprang from them.

Consider the range of targets in business and political elites against which criminal law enforcement agencies have mobilized moral indignation in the last decade. In the area of political corruption, in addition to the unprecedented cases against federal officials, charges for the criminal use of gubernatorial powers have been brought in Illinois (Kerner), Oklahoma (Hall), Maryland (Agnew, Mandel), and Tennessee (Blanton). In the early 1970s, 79 federal, state, and local officials were indicted in New Jersey. Between 1971 and 1976, the U.S. Attorney in Chicago indicted 256 individuals in 118 political corruption cases. The public image of corruption at the state level in New York reached the point in 1977 that the major Long Island newspaper ran a computation stating that 1 out of every 32 persons in the state legislature since 1973 had been indicted, compared to a ratio of 1 indictment for every 125 New York State residents.

The movement against white-collar crime has not been directed primarily at politicians. Scores of the nation's largest corporations admitted to criminal political contributions in the 1972 campaign; hundreds acknowledged bribes, or "sensitive payments," to foreign officials. Pervasive systems of business bribery—kickback relations between private company suppliers and private purchasing or inspections agents—were proven in the distribution of a series of products from beer to grain. Law enforcement agencies from the FBI to local police departments have been charged with systematic criminal violations of civil rights. A series of government welfare programs have been characterized as riddled with fraud by private business participants: "Medicaid doctors"; nursing home operators drawing federal health funds; mortgage companies adminis-

tering Federal Housing Administration subsidies to promote inner-city home ownership; sponsors and vendors in summer feeding programs for school-age children; Small Business Administration loan applicants; lessors of facilities for day care; vocational institutes; suppliers of remedial educational materials. Massive corruption was exposed at General Services Administration, the major federal government contracting agency. Stock frauds (Equity Funding, National Student Marketing, Home Stake Oil) and frauds against banks (C. Amholt Smith) were publicized as crimes with unprecedented dimensions. Computer-assisted thefts of "astonishing" magnitude have become a recurrent news item.

The last decade has been extraordinary not only in the range of perceived white-collar criminals but also in the widespread character of the social movement making the charges. I have been studying the treatment of white-collar and common crimes in the U.S. Attorney's office for the Eastern District of New York (EDNY), a federal prosecution unit covering Brooklyn, Queens, Staten Island, and Nassau and Suffolk Counties (Long Island). The EDNY has not been the limb of the nation's most celebrated political corruption, securities fraud, corporate bribery, government program fraud, or police corruption scandals. We therefore can take the exposure of its public to official charges of white-collar crime as a conservative representation of the experience in many other areas of the country.

In the early 1960s, the cases listed as "most significant" in the annual reports to the Attorney General by the EDNY's U.S. Attorney were against organized crime figures (Gallo, Lombardozzi, Persico). The one white-collar crime repeatedly prosecuted, a crime reflecting the real estate boom on Long Island in the 1960s, was fraud by real estate brokers against the Federal Housing Administration.

In the 1970s, the office prosecuted a series of politicians: William Cahn, Nassau County's Republican District Attorney for 12 years (double-billing Law Enforcement Assistance Administration and the county for expenses to National District Attorney and other conferences); Queens Village's colorful Democratic City Councilman, Matty Troy (tax evasion, embezzlement from law clients); Sam Wright, a poverty program leader and City Councilman from Oceanside-Brownsville (kickback for school district's purchase of educational materials); officials of the Long Island Park Commission (kickbacks for letting towing contracts); Republican Party workers in Nassau County (extorting 1% salary contributions from civil servants in return for promotions); and, for extorting contributions to a political party in return for public works contracts, the leader of the Nassau County Democratic Party in the 1960s, Marvin Cristenstein, and Republican Congressman Angelo Roncallo of Oyster Bay (acquitted). The following corporations and corporation executives were prosecuted: Barton's Candy, for adulterated food; Air France and other foreign airlines, for fabricating "groups" eligible for low fares; GTE-Sylvania, for bribing transit officials to buy subway bulbs; several executives at technical publications companies and at Grumman aircraft, Long Island's largest employer, for a
kickback arrangement; Pan Am, for negligently transporting hazardous cargo; the Security National Bank and its top executives, for corporate political contributions; Dun & Bradstreet, for covering up Federal Housing Administration frauds (acquitted); executives at Avis and at J. C. Penney, for commercial bribery (the Penney investigation killed the nomination of Kenneth Axelson, a top Penney executive, as Deputy Secretary of Treasury in the Carter Administration). Defendants in government program fraud cases included: 40 individuals (and 10 corporations, among them some of Long Island’s largest lending institutions), for fraud and official corruption in a Federal Housing Administration program subsidizing inner-city home ownership; nursing home operators for Medicaid fraud; James Elsberry, who had been an aide in the Carter Presidential campaign, for using his company to bilk New York City fraudulently for educational services; several rabbis for fraud in a Department of Agriculture school children summer feeding program; David Greenberg, “Batman” in a highly publicized police team, for a Small Business Administration fraud; and a state-wide network of podiatrists who attempted to bribe the New York legislature to continue Medicaid coverage for podiatry. The office convicted a number of police detectives from an elite unit for extorting money and drugs from narcotics dealers, and brought a tax evasion case related to the theft from the police property clerk’s office of the heroin recovered in the so-called French Connection case.

In addition to the impression made by this wave of EDNY-U.S. Attorney prosecutions, the public in the district was exposed to white-collar crime prosecutions brought by the federal prosecutor in Manhattan and by several state prosecutors. To mention only the additional public officials indicted: Thomas Mackell, Queens District Attorney; Brooklyn state legislator and Assembly Speaker, Stanley Steingut; Bronx County Democratic leader and state party head Patrick Cunningham; Suffolk County Republican Chairman Edwin Schwenk; Congressmen Brasco and Podell of Brooklyn; and people described in news stories as “close to” Mayor Beame (Irving Goldman); Brooklyn Democratic leader Meade Esposito (Ronald Parr); Queens Democratic leader Donald Manes (Judge Robert Groh); Attorney General Lefkowitz (his first assistant and other lawyers in his office); and Governor Carey (union leaders Anthony Scotto and Joseph Itonelli). I onelli admitted to stealing over $350,000 from a pension fund, $50,000 of which went to Georgia lawyers friendly with President Carter and Attorney General Bell in an attempt to stop the investigation.7

We have in our own experience an indication that the recently heightened official and public awareness of white-collar crime will soon fade to the relative indifference of the 1960s. I refer to the reaction I presume many readers would have to the review presented above. Even though we all lived through these or similar revelations, we still regard them with a sense that “it’s unbelievable,” worth at least the immediate response of a head shake or a new expression of cynical disgust. Somehow, in the very near aftermath of officially verified accounts of scandals about our elites, we are inclined to presume their legality.

On the other hand, there is a reason to suggest that attention to white-collar crime has been raised permanently to a new plateau. The movement to prosecute white-collar crime has been justified in the name of equal justice. Consider the career of another recent movement toward equal justice, the movement to provide equal civil legal services to the poor.

Jurisprudence has not been able to define with any degree of rigor the meaning for the poor of “equal access” to legal services. Nor has it given substantive meaning to the value of “even-handed” enforcement against white-collar and common crimes. There is a common, central dilemma. Before we allocate public lawyers to work on defining the wrongs of the rich or the rights of the poor, we are unable authoritatively to gauge the magnitude of the white-collar crime problem or to measure the legal needs of the indigent. As soon as they have gone to work at a professional level approximating that available as a matter of right and routine to wealthy individuals and powerful corporate clients, poverty lawyers and white-collar crime prosecutors have expanded civil protections for the poor and criminal prohibitions against the privileged. Commitments to promote equal justice intensify our appreciation of inequalities. This limitation of legal philosophy has been reflected in an obvious historical reality. The advance of American governmental commitments toward equal justice has not flowed steadily from the implications of a generally embraced political ideology but sporadically, out of contexts of societal crisis: in the case of civil legal services for the poor, the civil rights, social welfare, and anti-war protest milieu of the 1960s; in the case of the movement against white-collar crime, the “Watergate” ambiance of the 1970s. But the analogy also indicates that the heightened concentration of law enforcement agencies on white-collar crime may be finding ways to persist as the Watergate 1970s fade. The creation of the national Legal Services Corporation in 1974, after the dissolution of the broader movements of the 1960s, symbolized the continuity of the official public commitment to increase civil justice for the poor. American political movements toward equal justice require the push of external crises to start, but they may acquire their own momentum once in progress. I offer here material to fuel such speculation with an analysis of major themes in the social structure of the movement that has recently turned public and official attentions to white-collar crime.8

**OFFICIAL VERSUS LAY CATALYSTS**

In order to locate a domestic social movement that parallels the generalized outcry over the last decade against criminal behavior in the political and business establishments, we would have to go back to the Progressive movement. If we examine the catalysts of the two movements, we discover in the intervening half century a fundamental shift in both the agencies that effectively assert the criminal
character of America's elites. The Progressive movement had famous leadership in government, but the movement as a whole had a strong "popular" or "lay" character. In addition to the "settlement house" workers, who have been characterized as "spearheads" of the movement, the agents included rural populists, muckraking journalists, and organizations of "civic-minded" businessmen. In the early 1900s, the immorality of the Establishment was depicted in petition drives to recall corrupt mayors. Lay advocates such as Jane Addams used public oration to spirit state legislators to establish enforcement machinery. In the 1970s, the key agents have been Judge Sirica and Senator Ervin, unraveling the Watergate cover-up; federal prosecutors Thomson and Stern, turning up evidence of systematic political corruption in Illinois and New Jersey; Senator Church, publicly airing murder plots and other crimes by the CIA; Securities and Exchange Commission (SEC) enforcement chief Stanley Sporkin, compelling disclosure of illegal domestic political contributions, and international bribery by American corporations.

Instead of the public exhorting the government to exercise Establishment criminality, the public of the 1970s has experienced a series of shock waves set off by "revelations" emanating from the government. As the decade's scandals broke, the mass news media began to characterize the moral atmosphere as a popular uprising. Jimmy Carter was ushered into the White House with populist rhetoric. But, up to at least 1975, the scandals could not be attributed generally to popular concern. "Watergate" exploded in the wake of Richard Nixon's landslide 1972 Presidential election. Richard Daley won reelection in 1975 to an unprecedented sixth four-year term, despite the conviction by U.S. Attorney James Thompson of several of the Chicago mayor's powerful political allies. Major American corporate giants like Exxon and Lockheed were officially denounced for bribing foreign political leaders despite the much vaunted "conservatism" of the 1970s, symbolized by the rise in "straight" college student aspirations for corporation careers. The recent movement against white-collar crime has not been an outgrowth of a popular uprising against the elite, but a historically unprecedented series of battles on nonpartisan grounds—Senators Ervin and Church acted as Democrats, but U.S. Attorneys were Republican appointees from 1969 to 1977—within elite circles of power.

Seen as a series of attacks against the Establishment that started within government, the movement against white-collar crime suggests an analogy with the antipoverty program of the 1960s. Moyo has characterized the community action program of the Office of Economic Opportunity as the first historical manifestation of "the professionalization of reform":

Increasingly efforts to change the American social system for the better arose from initiative undertaken by persons whose profession was to do just that. Whereas previously the role of organized society had been largely private—the machinery would work if someone made it work—now the process began to acquire a self-starting capacity of its own. Just as the social welfare reform initiatives of the middle- and late 1960s took shape in the late 1950s and early 1960s, before the proliferation of civil rights protests, urban riots, and anti-war demonstrations, so the movement against white-collar crime in the 1970s took off only after the dissolution of the "anti-Establishment" movement of the 1960s. In the 50-odd years since the end of the Progressive era at the start of World War II, segments of American governmental machinery have developed autonomous capacities to pull the widespread public presumption of legality out from beneath public and private centers of domestic power.

**CASE VERSUS INSTITUTIONAL OBJECTIVES**

One reason that many of the official catalysts of the recent wave of indignation against the Establishment played at most a minor role in stimulating the Progressive movement is that they either did not then exist (such as SEC and Internal Revenue Service), or, in the case of U.S. Attorneys, existed with only a semblance of their current institutional strength. The institutional incapacity of federal prosecutors to play a significant role against white-collar crime was indicated in the graft prosecution of San Francisco's Boss Ruef in 1907. Ruef was convicted by a federal prosecutor, but only after Fremont Older, the crusading editor of the Bulletin, first persuaded a millionaire, Rudolph Spreckels, to guarantee the expense of the investigation, and then persuaded President Roosevelt to lend the services of William Burns, the federal government's star detective, and Francis Heney, one of its best-regarded special prosecutors. Corruption prosecutions by local U.S. Attorney's offices which investigate with little or no guidance from Washington and with autonomous internal resources is a recent pattern.

The emergent capacity of prosecution offices to mobilize autonomously against white-collar crime has changed the dominant motif of movements denouncing illegalities by elites. The paradigmatic legal product of the recent surge of righteous attacks on elites has been the criminally prosecuted case. We have been exposed repeatedly to investigative chases in which fish turn one after the other against big fish, building toward a climax in an adjudication of the guilt of the top figure. Once the fate of the "big enchilada" has been decided, the drama subsides. Compare the dramatic pattern in the campaigns for institutional reform that distinguished the Progressive era. A criminal prosecution would be one moment in the history of a more general movement to replace patronage with a civil service system or to adopt a scheme of prohibitory legislation and regulatory commission designed to govern an industry comprehensively.

The "case" motif for the recent expression of outrage against elites is emphasized by the fact that criminal prosecutions have neither emerged from nor lead movements for institutional reform. Despite the range of officially certified criminality by major corporations and by political officials across the country, the scandals of the 1970s have produced virtually no major institutional reforms.
legislation as unconstitutional—have become the central forum for certifying the elite's immorality. In a series of decisions illustrated in the next section, courts have been receptive to expansive interpretations of criminal penalties pressed by the prosecution.

There has been a related change in the way journalists play a scandal-promoting and sustaining role. In the Progressive era, newspapers and news magazine writers produced a free-lance muckraking that portrayed whole institutions—city governments, meat packers, railroads—as fit for public condemnation, without great concern for the making of particular indictments. Upton Sinclair, Frank Norris, and Theodore Dreiser used the novel as a viable alternative to the news article, showing no professional awe of a sanctified line between fact and fiction. Investigative reporters have played powerful roles in the 1970s—Woodward and Bernstein, Watergate; Seymour Hirsch, My Lai; Jack Anderson in Washington; Jack Newfield and Wayne Barrett of the Village Voice, in a long series of exposés in the New York City area—but as promoters of particular scandals and specific cases, with a narrowing concern about facts. The Washington Post’s requirement for two sources before running Watergate revelations seems to reflect a criminal court’s “two witness” requirement for proving key elements of a prosecution’s case. In historical perspective, investigative reporters, courts, and even legislators have become assisting players in prosecutive dramas against the elite.

The shift in motifs for expressing public indignation from institutional campaign to criminal case has also meant a major alteration in the perspective of the public. As some observed during “Watergate,” the development of a white-collar criminal case shuts out the public from monitoring the mobilization of official attacks against the elite, possibly blocking the potential for mounting campaigns for institutional reform. Once the lawyers and the courts step in, public access to the contingencies and progress of the inquiry is cut off by doctrines of grand jury secrecy and fair trial and by deals for immunity which deter legislative questioning of witnesses and induce government witnesses to keep a distance from reporters.

As the definition of America's crime problem has changed to feature white-collar crime, the process of defining the crime problem has become less democratic in several respects. The public must rely on officials to learn about the magnitude of the problem; victimization surveys and self-report studies, increasingly used to describe the incidence of common crimes, will not work. In any given case, the public cannot grasp the nature of the behavior being prosecuted by reading the legislated basis of the case. The statutory sections used to indict white-collar crimes—mail fraud, conspiracy to defraud the United States, false statements—are distinctively uninformative. As the process of discovering and acting officially against illegitimations of the elite has become a legalized process governed by the criminal prosecutor, the public has changed its posture from that of an exhorting catalyst to a passive audience that receives what doctrines of legality and prosecutive tactics allow it to hear.
EXECUTIVE MORAL ENTREPRENEURS

A major indicator of the dominance of law enforcement executives in the recent movement to depict the illegality of business and political elites has been the innovations achieved by prosecutors. While legislators were essentially inactive in their legislative capacity, prosecutors have developed the legislative capacities of their offices, expanding public attention toward white-collar crime by “making law” and bringing “unprecedented” cases. In a number of cases widely reported as “firsts,” prosecutors have extended the criminal sanction to new substantive targets. After Pinto cars became notorious for dangerously placed fuel tanks, a state-level prosecutor in Michigan indicted Ford Motor Company for criminal negligence. Turning the wire fraud statute to a novel use, the U.S. Attorney in Manhattan indicted United Brands for bribing a Honduras official (which itself was not then a criminal offense under American law). In 1976, the U.S. Attorney in Virginia tested pollution law by prosecuting executives of Allied Chemical for poisoning the James River. Major accounting firms became subject to criminal charges for condoning misleading annual corporate financial statements. In what the Tax Division’s chief characterized as “perhaps the biggest breakthrough we’ve ever had in the whole area of fraud in the widespread use of offshore tax shelters,” the Justice Department (unsuccessfully) prosecuted a San Francisco lawyer. Criminal charges that would have been unimaginable 10 years ago were brought against high-level FBI officials for violating the civil rights of political dissidents.

The enterprising role of prosecutors in expanding the substantive criminal law to reach previously unprosecuted practices of business and political elites has been much more widespread and innovative at the federal level, where prosecutors are appointed, than at the state level, where they are elected. Federal prosecutors have transcended traditionally accepted federalist barriers on their jurisdiction by innovating statutory bases for major political corruption and business bribery cases. Finding that the federal criminal code failed to provide language specifically reaching many forms of corrupt use of office by nonfederal officials, U.S. Attorneys made the Hobbs Act, originally conceived as an anti-labor “rackeeteering” statute, into a weapon against local and state politicians. Federal criminal law also fails to condemn domestic commercial bribery directly; and when charges for tax crime have been strategically unfeasible, U.S. Attorneys have applied the richly interpretable language of the mail fraud statute (use of the mails in a scheme to defraud) in novel ways. The formally vacuous “conspiracy to defraud the United States,” expanding for over 100 years, has been put to ever newer uses. Prosecutors in the Eastern District of New York used this section to indictment podiatrists for attempting to bribe the inclusion of their specialty in the state's Medicaid program, despite the fact that the federal government had made a policy decision in the statute that podiatry was worthy of subsidy if the state opted. "Filing a false statement" with the federal government may or may not any longer require that the deceiver know he is lying to the federal government.

DECENTRALIZED IMPETUS

The impetus behind the movement must be characterized as decentralized. The discussion to this point has emphasized the role of federal prosecutors but, across the country over the last decade, law enforcement executives outside of U.S. Attorney's offices have also played enterprising and controversial roles. Stanley Sporkin, appointed as chief of enforcement at the SEC in 1974, quickly emerged as an innovator in applying the SEC’s power of negative publicity to corporations accused of international political bribery and to accounting firms accused of wrecking at evidence of fraud. In a parallel development, the SEC rapidly built up its enforcement capability in Southern California in the 1970s. Gerald Boltz was appointed Western regional SEC administrator in 1972. He immediately announced plans to move regional headquarters to Los Angeles, which had been an embarrassment to the law enforcement community as an area overripe for large-scale fraud prosecutions, and to increase the Los Angeles staff from 25 to 40. Boltz had previously earned enmity in both political parties as the SEC administrator out of Fort Worth, Texas, who developed the Sharpstown bank case, a multifaceted bank fraud-political corruption scandal that reached Governor Preston Smith and other leading Democratic figures in the state legislature and which forced the resignation of Will Wilson, a Deputy Attorney General under John Mitchell in the early Nixon Justice Department.

The movement against white-collar crime was decentralized in it characterized a number of independent enforcement agencies, and also in the sense that the impetus came substantially at the field level, not as a result of policy shifts made in Washington headquarters. Boltz and Sporkin worked on parallel policy tracks, but within the SEC bureaucracy they collided frequently and famously. Differences in the relationship between white-collar crime prosecutors and local FBI offices indicate the unsystematic, unregulated character of the bureau's initiatives. Under Neil Welch, the Philadelphia FBI office developed a reputation for leading a change in bureau priorities toward white-collar crime and enjoyed public accolades from the local federal prosecutor. At the same time, the New York Bureau "S.A.C.,” Wallace LaPrade, was in frequently bitter conflict with the U.S. Attorneys in Manhattan and Brooklyn. The bicentennial, Independence Day issue of the New York Times featured a front-page blast by Eastern District U.S. Attorney David Trager charging the bureau with incompetence and unresponsiveness in white-collar crime investigations.

Perhaps the most dramatically expanded force promoting “the white-collar crime problem” has been the U.S. Attorney's office. The change in 10 years has been so extensive that accounts of the work of federal prosecutors based on
research conducted in the 1960s are now substantially misleading. The literature
describes assistant U.S. Attorneys as at work on cases that were “substantially
made” by investigative agencies before entering the prosecutor’s office.34 This
analysis is inapplicable to the investigating prosecutors who currently make up
from one-third to one-half of the legal staff of numerous U.S. Attorney’s offices.

That the movement has been decentralized (or better, uncentralized) is
indicated by the role played by nationally organized feeders of cases to U.S.
Attorneys. The pattern is that federal prosecutors have led the investigative
agencies which have traditionally presented them cases. A reordering of
priorities in the FBI began quite late in the decade. Various investigative offices
—in the General Services Administration and in the Departments of Housing and
Urban Development; Health, Education and Welfare; Agriculture; and Labor—
were reorganized after criminal prosecutions emerged from scandals within the
agencies’ jurisdiction.35

The origins of the movement in U.S. Attorney’s offices can be traced back
before Watergate, to a time when the Department of Justice in Washington
(“main Justice”) was rarely supportive and at times pointedly hostile to the trend.
The then-unprecedented campaign against political corruption by U.S.
Attorneys Lacey and Stern in New Jersey was threatened when Stern, Lacey’s
first assistant and choice as successor, was held in limbo by the White House as an
“acting” U.S. Attorney for a year at a time when the office was shifting emphasis
from the Democratic city machines to Republican statewide leaders.36 The
investigation of the Baltimore County political machine, run by assistant U.S.
Attorneys Barney Skolnick and Tim Baker, led to the Agnew case without
encouragement, much less initiative, from the Justice Department.37

There were similar if less dramatic signs of decentralized impetus among
federal prosecutors in areas of white-collar crime enforcement other than
political corruption. In the early 1970s, the first “environmental protection” and
“consumer frauds” sections emerged in some of the larger U.S. Attorney’s
offices. Frauds sections evolved partly from unanticipated demands for
personnel to conduct massive prosecutions of abuses in government social
welfare programs. In the Eastern District of New York, as in Detroit, Chicago,
and other urban centers, scandals over official corruption and fraud by brokers
and mortgage companies in Federal Housing Administration ghetto home
subsidy programs encouraged the reorganization of the U.S. Attorney’s office. In
1973, the Brooklyn office found itself faced with the need to assign three of its
assistants to a nine-month trial. That was about one-tenth of the line criminal
staff at the time. Internal adjustments to such unanticipated, prolonged shifts of
staff resources prepared the office for the formalization of a separate frauds
section.

This pattern of a spontaneous outcropping of simultaneous white-collar crime
initiatives by federal prosecutors has continued throughout the decade. While
agencies that made decisive contributions to the escalation of the movement in its
earlier stages have moved to the sidelines, more and more U.S. Attorney’s offices
have begun to reorganize their priorities in favor of white-collar crime. The
Internal Revenue Service initiated major political (Agnew) and police corruption
(New York, Chicago) investigations in the early 1970s, but then was cut back in
the mid-1970s when Internal Revenue Service Commissioner Donald Alexander
moved his investigators more exclusively to a “tax collection” emphasis. All the
while the group of U.S. Attorneys’ offices, publicly declaring new “white-collar
crime” priorities, expanded. The first set of the decade included New Jersey,
Maryland, and Chicago. Then Eastern New York, Pittsburgh, and Los Angeles
reordered priorities. Most recently Boston, long a classic example of a politically
indebted, quiescent office, has joined the trend. The Philadelphia (Congressman
Eilberg) and Georgia (Bert Lance)38 offices have become famous new entrants in
the group. The San Francisco U.S. Attorney announced a blanket policy of
nonprosecution for most bank robberies to dramatize the reorientation of his
office.

The Justice Department has made a series of efforts over the last few years to
get ahead of the trend and give centralized direction. In the first half of the
decade, the Justice Department was the leading target of sensational white-collar
crime accusations: Henry Peterson, then chief of the Criminal Division, for his
relationship to the Watergate cover-up; Attorney General John Mitchell for the
Watergate and Ellsberg break-ins; the Vesco matter before the SEC, and the
ITT-Hartford insurance (“Dita Beard”) merger approval decision. Starting with
the Ford Administration,39 the Justice Department has made a series of moves to
direct the movement. Attorney General Levi appointed Richard Thornburgh,
who had been U.S. Attorney General in Pittsburgh, as Criminal Division chief
and named Manhattan federal judge and ex-Southern District of New York
Prosecutor Harold Tyler, Jr., to be Deputy Attorney General. Both had been
publicly identified with the movement and became powerful spokesmen for it.
Recent announcements from the Justice Department about beefing up fraud and
public integrity units indicate that it still perceives the need to be seen as leading
the trend. But a view of the Justice Department’s role in the last decade shows
that the movement overall has been erupting on a series of fronts without a
central design. The expansion of the “white-collar crime problem” has been a
genuine “social movement,” the product of initiatives by people in parallel and
independent organizational positions who perceive similar opportunities, not a
change integrated by administrative leadership from above.

HISTORICAL ACCIDENT, PERSONAL MOBILITY,
AND COMMON-SENSE MORALITY

What of the philosophy of this newly influential set of enforcement officials?
Has a common, historically emergent political perspective in federal executive
agencies been responsible for the incorporation of white-collar crime in the
collective definition of the crime problem? And what of the influence of
Watergate? Was that unique and already fading scandal largely responsible? The
movement clearly predated Watergate; long-term trends, not just historical accident, seem to be at work. On the other hand, there is strong evidence that Watergate played an extremely important role in accelerating the development. In an attempt to piece together the relationship between personality and situational opportunity into a comprehensive understanding of the process of change over the last 10 years, it is useful to consider an analogy from the decade of the 1960s—Robert Morgenthau's administration of the U.S. Attorney's office for the Southern District of New York.40

Morgenthau received great publicity and professional acclaim for his successful prosecutions of Carmine DeSapio of Tammany Hall and a series of major securities fraud cases. Nothing in Morgenthau's background gave a clear indication that he would make white-collar crime a new priority. Nowhere had he spelled out a jurisprudential or political theory calling for the prosecution of political corruption and business crimes.41 Assistants who were appointed to run white-collar crime sections in the office knew that they had spelled out no such philosophy. The change in the office must be understood as the natural development of an aggressively run, self-consciously elite office in a time of new opportunity.

It should be recalled that in the 1950s the Southern District, by reputation the "premier" prosecution office in the country, had devoted its energies to the punishment of political crimes by Leftists. In the Attorney General's Annual Reports for the years 1950 to 1958, Internal Security was the first priority, and the Southern District cases deemed worthy of specific mention were predominantly prosecutions of Smith Act violations, espionage on behalf of the Soviet Union, and contempt of Congress and false statements growing out of investigations of subversives. After reporting several major judicial reversals in the late 1950s of convictions of Leftists (Jencks, Yates), the Attorney General's report for 1960 showed a general de-emphasis on internal security and, in the Southern District, the emergence of securities frauds prosecutions (Francis Peter Crosby; the Rock Salt scandal—Fortune and Anthony Pope; Alexander Guterman). With the installation of the Kennedy Administration and the appointment of Morgenthau in 1961, the office's already ebbing Cold War animus was overtaken by the spirit of meritocratic professionalism in search of an appropriate mission.

It was natural42 that a group of prosecutors who regarded themselves as the best would seek opportunities to dramatize their excellence. White-collar crime cases were likely to be seen as especially difficult in part because they had to be uncovered and "made," in part because they brought an unusual quality of defense counsel to the other side. Political corruption prosecutions would especially dramatize the office's professional integrity and independence from politics. They would quickly distinguish the office's new staff from the prior regime which, however ethically, played a strong political role as an enforcement arm of nationally led anticommunist campaigns.

The case for emphasizing white-collar crime was put as a matter of enforcement philosophy rather than mere self-celebration: Federal prosecutors should reach where state prosecutors jurisdictionally cannot, and the best federal prosecution staff should reach crimes inaccessible to lesser staffs. In a sense, the most serious crimes are those which attempt to make use of politically powerful or economically elite positions to frustrate detection and prosecution; white-collar crimes define the boundaries of the criminal justice system's capacities and the limits of moral integrity in the economy and polity. The normative statement would require further qualification before it could be embraced as a tenet of a proper social philosophy, but no more elaborate ideology was necessary to motivate the office effectively.43

Similarly, the movement in the last decade was propelled as a nationally led, right-wing influence in local offices suddenly dissolving with Watergate. Pre-existing trends were allowed free expression. The trends included a general if gentle meritocratic movement; the rapid expansion of social welfare programs in the 1960s without carefully planned controls; pressure from Naderism for action against consumer fraud; and the cycle of the "Go-Go 60s" and the recession of the early 1970s, which threw many businesses into bankruptcy when the crimes of their pasts were suddenly matters of public record. The early 1970s showed signs of these trends in increased white-collar prosecutions, as well as signs of an expected increase in prosecutions of Democrats by new Republican appointees in Democratic strongholds such as Chicago and Newark. "Watergate" marked the end of repression against war and race protesters and destroyed the "street crime" campaign of the Nixon Administration, removing law enforcement concerns that had obfuscated trends toward increased attention on white-collar crime. Federal criminal prosecutions in the Northern District of Illinois, to take the most glaring example, were no longer represented in the public eye by the trial of the Chicago Eight.

At the same time, Watergate provided historically unprecedented opportunities for professional mobility to a national set of aggressive lawyers. The context was more novel than the personalities. Certainly the lawyers in question entered public office without any distinctive ideological cast. By and large, the leaders of the white-collar crime movement in U.S. Attorney's offices and other enforcement agencies had no clear affiliation in their personal backgrounds with a form of political philosophy that dictated a special animus against the white-collar criminal. In fact, many of the U.S. Attorneys and especially influential assistant U.S. Attorneys in the middle and late 1970s had entered the Justice Department during the early 1970s, when the department was unusually repulsive to social critics. It required a historically distinctive suspension of moral judgment about government to become a federal prosecutor at a time when one's school friends might well become defendants in draft resistance or war protest cases.
In a general pattern, the first Nixon-Mitchell appointees to U.S. Attorney positions were party stalwarts and/or middle-aged, prominent partners in large corporate law firms. This was the case in Los Angeles, Chicago, New Jersey, and Brooklyn. Watergate created power vacuums that enabled younger, less politically connected, and much less career-established assistants to direct the office against white-collar crime, either formally as a new U.S. Attorney or informally as a first assistant or chief of a special prosecutions section. In some offices, the first Republican appointee had already received the appointment as a federal judge that he had anticipated with some confidence before he reached the prosecutor’s office, based on his prior political ties and professional stature. His replacement did not have the same credits built up and was likely to be more “hungry.” In New Jersey, Stern, an ex-Manhattan assistant D.A. and then an assistant U.S. Attorney, succeeded Lacey, a senior partner in a prestigious corporate firm. In Chicago, Thompson, a young Northwestern University law professor, replaced Bauer, who had had a long career at the Du Page County District Attorney’s office as a successful Republican electoral candidate.

Elsewhere, new U.S. Attorneys could rely on the context of the Watergate scandal to neutralize the influence of their offices’ traditional political constituencies. In Brooklyn, David Trager and Edward Korman—two lawyers in their 30s who had been close friends from appellate clerkship days through their tenures as assistants in the office’s Appeals division in the early 1970s—took over when a bizarre series of events (the suicide of the U.S. Attorney, an unsuccessful prosecution of Long Island Republicans that was brought precipitously by an acting U.S. Attorney) created a vacancy and cut off the control of the selection process that the Long Island Republican organization otherwise would have exercised. The Watergate scandal was a shield for the Maryland office as it developed the Agnew case. By the time the Maryland prosecutors were ready to invite the Attorney General into plea bargaining with Agnew, Elliot Richardson had replaced Richard Kleindienst and was mediating the relation between Nixon and Special Prosecutor Archibald Cox. John Mitchell—who early in the Republican administration had forced the resignation of Maryland U.S. Attorney Stephen Sachs by blocking indictments of public officials—was now the target of several criminal investigations.

In Los Angeles, the first Republican U.S. Attorney under Nixon—Robert Meyer, who had been George Murphy’s Senate campaign manager—surprised many with an independent stance. Local police and sheriff’s officials then tapped White House connections to stop his investigations of police brutality and corruption. Assistant Attorney General Mardian demanded Meyer’s resignation for resisting the inclusion of an official secrets-type charge in the indictment of Daniel Ellsberg. Meyer acceded to the pressure from Washington and left. A resulting power vacuum under the next U.S. Attorney was filled by Stephen Wilson, an enterprising assistant who became chief of Special Prosecutions. Wilson had come to Los Angeles from the Justice Department’s criminal Tax Division, after examining carefully the comparative opportunities for personal mobility by travelling to the nation’s U.S. Attorney offices as part of his itinerant work. An office whose leadership had been battered and finally purged on partisan and ideological grounds could now choose targets like Dr. Louis Cella, Jr.—the single largest contributor to both Democratic and Republican California campaigns in 1974—without fear of retribution.

Watergate, in its broad sense as the series of allegations tying numerous Washington headquarters into a seamless scandal, provided protection for controversial executive initiatives in a range of federal enforcement and oversight agencies. About a year after Boltz became Western regional SEC administrator, SEC Chairman G. Bradford Cook was tainted by the investigation of Robert Vesco, Maurice Stans, and John Mitchell for influence peddling at the SEC. His resignation symbolized an extraordinary period of vulnerability to charges of improper commission influence on staff investigations. FBI field leader Neil Welch reportedly had run close to bureaucratic suicide by resisting the FBI’s COINTELPRO emphasis on Leftist subversives in the 1960s. He received an unexpected measure of freedom for his unconventional emphases on white-collar and organized crime when the responsibility of J. Edgar Hoover and Wallace LaPrade of the New York office for illegal investigative tactics was exposed. The General Accounting Office (GAO), Congress’s investigative arm, exploited the Watergate context to institute a significant new measure of autonomy for provoking scandals about government fraud:

Between 1972 and 1976, the number of GAO reports that were given nationwide, in-depth media coverage grew from 31 to 180, or about one every other day... the traditional audits performed by the GAO—financial reviews—became the basis for national media attention, although the GAO had not suddenly changed its modus operandi.

Awakening to its new opportunities, the GAO threw off a traditional congressional constraint. The agency used to “bury” an audit when the Congressman who ordered it did not care to have the findings released. In 1977, Comptroller General Elmer Staats issued regulations providing for the release of all reports, with or without the specific authorization of the requesting member.

CONCLUSION

The way in which Watergate promoted a general movement against white-collar crime calls to mind Edward Shils’s analysis of how charisma works as a modern source of societal integration. On a mass level, citizens silently maintain allegiance to a network of institutions through their transcendent respect for perceived center of collective integrity. The Presidency was suddenly stripped of all shreds of compelling aura by the unprecedented exposure symbolized by the tapes. Sources of political and economic power less central to
national identity also became suddenly vulnerable to embarrassing inquiries that previously would have been impossibly impolitic. As a practical matter, the White House temporarily lost its considerable ability to protect lesser power centers from moral attack. Accordingly, the movement against white-collar crime should recede as the Presidency is restored to the insulation of presumptive legitimacy.

There are numerous signs that the movement is in marked decline. Shortly after he took office, President Carter found it costly but in the end politically feasible to fire Philadelphia U.S. Attorney David Marston despite Marston’s highly publicized allegations that his dismissal had been promoted by a target of his investigation, Representative Joshua Eilberg. Federal prosecutors have joined to petition for legislative relief from the restrictions of the Tax Reform Act of 1976. They say the act has all but stopped the previously rich production of political corruption cases from tax investigations.49 Securities fraud prosecutions in Los Angeles have returned to a relatively unexceptional state. The new head of the General Services Administration unashamedly opined that the level of corruption in government contracting, which has been alleged in the indictment of over 115 persons or firms, has been overblown.50 The Department of Justice announced the formation of white-collar prosecution units in 27 offices, but added the pregnant afterthought that “Budget restrictions will probably prohibit bingings to fill slots.”51

On the other hand, some degree of institutionalization of the increased emphasis on white-collar crime has been achieved. The FBI was freed from J. Edgar Hoover by natural causes and from its historic priorities on violent criminals, political subversives, and quantifiable measures of productivity by a continuing series of scandals. It is now regarded as having shifted its emphasis to white-collar crime even by some of its most severe policy critics. Stanley Sporkin is widely regarded as having become politically unassailable in his command of SEC enforcement. (Some fear his personal power over the agency may rival Hoover’s.) Virtually all of the white-collar crime prosecutors mentioned in earlier pages have now left law enforcement, but many have used their fame to move to other positions of public power (e.g., Governors Thompson and Thornburgh), where they may be expected to value a continued reputation for sensitivity to white-collar crime. Judicial decisions validating significant, expansive prosecutive applications of statutes against white-collar crime have in some instances become firm precedents. I would add that an examination of the social organization and symbolic thrust of the movement indicates that it is structured to continue, albeit at a level reduced from the intensity of the 1970s.

There is a long-term market in American political culture for the symbols of white-collar crime law enforcement. The demand supporting the movement to date has been much more than a utilitarian concern for the efficient deterrence of antisocial conduct. There are, after all, remedies other than the criminal penalty for many of the illegalities that have been newly brought within the prosecutor’s reach. In order to redress or attempt to deter insider trading, water pollution, domestic commercial bribery, “sensitive” international business payments, illegal campaign contributions, and food contamination, fines can be assessed, boards of directors restructured, licenses revoked, and punitive damages increased. Public subsidy can be given to the enforcement effort without invoking the criminal law, through administrative agency action and through facilitated access to civil courts for private damage suits. In order to understand the expansion of “white-collar crime,” we must understand the demand that unjust enrichment and unjustly acquired power be made criminal; not just that it be made unprofitable but that it be defined officially as abominable, that it be treated as qualitatively alien to the basic moral character of society. The way the criminal law has been expanded by the white-collar crime law enforcement movement suggests a drive described by George Fletcher in the context of an examination of the evolution of larceny law:

The modern vision of the criminal law seems to be that the proper allocation of each item of property enjoys the full concern of the community; the dishonest displacement of wealth from one person to another therefore becomes a public harm. . . . The end in sight is the criminalization of all cases of dishonest self-enrichment.52

Public awareness of white-collar crime has been shaped by government officials. The white-collar crime law enforcement movement has been decentralized. Its agents have been enterprising promoters of morality. Their rhetoric of motivation has been an apolitical indignation about covered-up, publicly indefensible bases of political influence and economic privilege. Motive power has been supplied not by institutionalized bureaucratic authority nor by party loyalties, but by a striving for personal, professional mobility which sincerely and shrewdly exploits a common-sense indignation about social injustice. Once the limits of the criminal sanction have been expanded against “white-collar” crime, it should require no special policies to sustain the expansions. As the trend has developed over the last decade, we may expect that, until it is replaced by another nationally led politicization of “street crime” or centralized campaign against political dissidents, the “white-collar crime problem” will not revert to its insignificance of the 1960s. We should continue to see the criminal law used with distinctive dramatic power to express, however unsystematically and superficially, an official, collective condemnation of social injustice.

NOTES

1. Two Democratic Attorneys General form the 1960s wrote widely read books on “the crime problem.” Ramsey Clark, Crime in America, New York: Simon and Schuster, 1970, made an occasional rhetorical reference to white-collar crime and the problem of unequal justice, but focused on arguing the causation of crime by urban poverty, drugs, and guns and on the overblown
reputation of organized crime, which he characterized as engaged primarily in efficient street and vice crimes (see p. 74). Robert F. Kennedy's *The Enemy Within* was an account of dramatic and sordid crime against organized labor's rank and file, and generally the people of the United States, committed by *gangsters* in trade unions and the cowardly or mercenary employers and lawyers who on occasion criminally conspired with them [New York: Harper, 1960; ix; emphasis added].

Kennedy's Organized Crime Section, particularly the so-called get Hoffa squad, is credited by many federal law enforcement insiders as the first example of a white-collar prosecution office: investigating prosecutors working closely with in-house accountants. Many direct lines can be traced from Robert Kennedy's Washington-based campaign against labor racketeers, through its regional arms, the Organized Crime Strike Forces, to U.S. Attorneys' offices that became renowned for generalized white-collar crime emphasizes. For example, the careers of Herbert Stern and Jonathan Goldstein, successive U.S. Attorneys in New Jersey, linked the 1960s Kennedy Justice Department with the 1970s (Paul Hoffman, *Tiger in the Court*. Chicago: Playboy, 1973, p. 33). But the role to be attributed to RFK's contribution is at most that of a proven model, and not a "first" nor a sustaining empirical cause of the last decade's social movement against white-collar crime.

2. According to "Federal Prosecutions of Corrupt Public Officials, 1970-1977," A Report Compiled by The Public Integrity Section, Criminal Division, U.S. Department of Justice, August 24, 1978, federal prosecutions of federal officials rose from 9 in 1970 to 129 in 1977. Interestingly, there was a jump from 9 to 58 between 1970 and 1971, and a continuation at that level until 1976, when another jump brought the annual number of federal officials indicted to 111. The statistics for charges of public officials are 1680. The pattern is similar: two-stage jump, although the pattern is less defined. The same pattern is visible, though more dimly, in the statistics on local officials indicted federally.


7. A comprehensive review of the recent increase in public attention to white-collar crime would take us beyond the boundaries not only of the Eastern District of New York but also by prosecuted cases to the less easily documented atmosphere of scandal. The *New York Times* Index to the N.Y. Times began listing articles under a category for "white-collar crime" in 1955. The statistics for "government/indictments" category in the Reader's Guide to Periodical Literature contained about 20 items on white-collar crime or related matters, 13 of which were on Adam Clayton Powell, in volume 27, covering March 1967 to February 1968; and about 69 in volume 37 10 years later.

8. Social scientists have lagged far behind the public and behind government officials in turning their attention toward white-collar crime. Faced with a radically altered public definition of their field, perhaps the best tactic for criminologists would be to hold onto received ideas and turn to research on white-collar crime to fade. This seems to be the strategy taken by James Q. Wilson, who refuses to turn his mind to white-collar crime in *Thinking About Crime*. New York: Basic Books, 1975. Wilson explains:

    this...reflects my conviction, which I believe is the conviction of most citizens, that predatory street crime is a far more serious matter than consumer fraud, antitrust violations [xx].

(Wilson fails to mention political corruption and criminal civil rights violations by law enforcement agents. As he was writing shortly after the Watergate revelations, it is questionable whether his convictions were the same as most citizens.)


15. There is not decent history of the office of U.S. Attorney. For a passing mention of a few of the many themes that a thorough history would have to develop, see Whitney North Seymour, Jr., *United States Attorney*. New York: Morrow, 1975, pp. 19-41.

16. Walton Bean, *Bosm Ruef's San Francisco*. Berkeley: University of California Press, 1952. Federal authority was also significant for its absence from the movement that brought down New York City's boss. The Tweed "Ring" was turned out of power by local popular forces in the general state election of 1871 after a civic reform group, The Committee of Seventy, and the New York Times had developed and published detailed evidence of fraud and corruption. Indictments came only after the stunning electoral victory, which led to the appointment of a special investigator at the state level, Henry J. Taft, who then fed incriminating evidence into criminal prosecutions for years. Alexander B. Callow, *The Tweed Ring*. New York: Oxford University, 1966, pp. 253-279. These examples suggest not just that the autonomous power of federal law enforcement has risen but also that the autonomous power of local newspapers to turn out corrupt municipal systems has fallen dramatically.

17. Cf. the scale and criminal penalties of the Water Pollution Control Act of 1972.


19. Nadjar was appointed by Governor Rockefeller in September 1972 to investigate and prosecute corruption in the New York City criminal justice system. He expanded his jurisdiction to reach political figures not formally within the criminal justice system, such as Patrick Cunningham, a Bronx-based, state Democratic leader with influence over the appointment of criminal court judges. Nadjar was dismissed by Governor Carey in 1975, after most of his cases had been thrown out at trial or reversed after conviction on appellate judicial objections to his investigative procedures. See his own tally in *A Public Accounting: September 18, 1972 to February 29, 1976*. Office for the Investigation of New York City Criminal Justice System. 2 World Trade Center, New York, 1976.

20. The Bernstein-Woodward behind-the-scenes book on their reporting is full of indications of role modeling on the criminal trial:

    *I was absolutely convinced in my mind that there was no way that any of this could have happened without Haldeman, [Washington Post Executive Editor Ben Bradlee told Woodward and Bernstein]... But... I was determined to keep it out of the paper until you could prove it..." Bradlee served as prosecutor, demanding to know exactly what each source had said..."I want to hear exactly what you asked him and what his exact reply was." What did the FBI guys say? The reporters gave a brief summary. "No... I want to hear exactly what you asked him and what his exact reply was." This meeting with Deep Throat produced the most serious disagreement between Bernstein and Woodward since they had begun working together. The question was whether a convincing and well-documented account of Mitchell's and Colson's roles could be written. Bernstein reworked the story three times. Each time... Woodward said he didn't think it...
should run until they had better proof. Bernstein argued that the story was legitimate, that the newspaper didn’t have to offer definite evidence.


29. Title 18 U.S.C. 1001. We may not be far from a prosecution for false statement of a university student who maintains eligibility for a federally subsidized educational loan by cheating on exams. A cooperative cheating effort in a fraternity might become a “conspiracy to defraud the United States.” Title 18 U.S.C. 371.

30. "Sporkin the Enforcer," Newsweek, October 24, 1977, p. 94. Voices against the SEC’s reliance on the power of negative publicity as punishment have been raised from both the defense and prosecution sides. Some argue that Sporkin is a paper tiger. "Why the SEC’s enforcer is in over his head," Business Week, November 21, 1976, pp. 70-73, 76.

31. Some of the criminal cases worked up by Los Angeles SEC investigators and federal prosecutors during this period included: Equity Funding, the most publicized corporate fraud of the decade; T. P. Richardson, one of the largest "third market" securities brokers in the country, for the biggest short-selling fraud in the history of SEC prosecutions; principals in All American Funds, in the first indictment under a section of the Investment Advisers Act of 1940 prohibiting fraud by an investment adviser; principals in Shamrock Mutual Fund, once rated the third most successful mutual fund of its size nationally and the first mutual fund ever forced into receivership, for the arrangement of kickbacks in return for the purchase of speculative securities; James Dondich, for an international investment fraud in the purchase of millions of tons of sugar, rice, and other commodities; Barry Marlin, for a real estate and commercial investment fraud which created a public loss estimated at more than $12 million. (Details and superlatives come from SEC Litigation Releases and from Annual Reports to the Attorney General of the U.S. Attorney’s office for the Central District of California.)

32. According to an SEC staff lawyer who worked in the Los Angeles office during this period, Boltz insisted on running his own shop and resisted Sporkin’s attempts to use regional resources for his own organizational needs. For example, a national SEC enforcement chief might try to motivate his staff by holding out the lure of desirable regional assignments such as a winter in Los Angeles rather than in Wisconsin. Boltz would resist when weaker regional administrators would not, and he argued openly with Sporkin at regional review meetings. From the commission’s perspective, Boltz had acquired a controversial reputation from his work in Texas, and his selection to lead the West was a strong confirmation by the commission leadership of his past performance. But the event that precipitated his assignment was the retirement of his predecessor—the natural process of attrition—not a formal change in SEC priorities.


39. Some observers, noting that John Mitchell’s career had exuding ironies, would say that the Justice Department earlier had been supportive in decisive ways. Mitchell’s Justice Department pressed in 1970 for the passage of the "use immunity" statute which became instrumental in persuading witnesses to make many of the biggest cases, for example Agnew’s. (But I do not believe the formal immunity statute was essential. Prosecutors previously had functional alternatives. The issue has been considered extremely debatable. For the Justice Department’s view in the mid-1970s, see Richard L. Thornburgh, "Reconciling Effective Federal Prosecution and the Fifth Amendment," Journal of Criminal Law, 67 (June): 155-166, 1976). Mitchell responded generously to requests for staff increases from some offices that had made progress against political corruption, the most dramatic example being New Jersey which, according to tallies kept by the Executive Office for U.S. Attorneys, rose from 20 assistants in 1969 to 51 in 1971.

40. For the Southern District’s history, I am drawing on a suggestion by Burke Marshall; an interview with John Lyman, who was a white-collar crime section chief under Morgenthau in the early 1960s; and on Victor Nekisky, "A Famous Prosecutor Talks About Crime," New York Times Magazine. February 15, 1970.

41. And, leaving the U.S. Attorney’s office for an unsuccessful run as the Democratic candidate for Governor against Nelson Rockefeller in 1962, Morgenthau had had plenty of opportunity to publicize any strong views he may have had against "robber barons" and the corruption of the political process by private wealth.

42. "Natural," unprompted to the participants; requiring no special explanation by way of unique personal perspective.


46. Personal interview.


49. For a detailed description of possible criminal cases discovered by the Internal Revenue Service during the first 14 months following the effective date of the act and not disclosed to prosecutors specifically because of the act's disclosure limitations, see pp. 10 and 12 of "The Erosion of Law Enforcement Intelligence and its Impact on the Public Security," Hearing before the Subcommittee on Criminal Law and Procedure. Committee on the Judiciary, U.S. Senate, 95th Congress, 2nd Session, Part 6A, Appendix, April 25, 1978. ("Five cases of possible bribery of Federal officials . . . fifteen cases of possible illegal political contributions by corporations . . . six cases of securities laws violations.")

50. "The new head of the General Services Administration Wednesday called his personnel 'all basically honest' and asserted that agency corruption was never as bad as reported. . . . Retired Navy Adm. Rowland G. Freeman III . . . was named by President Carter in March to succeed Jay Solomon, who had been criticized for his openness with the news media about the scandal." "GSA Fraud Oversized, New Agency Chief Says." Los Angeles Times, October 18, 1979, part 1, p. 19.


HISTORICAL DEVELOPMENT OF CONSUMER FRAUD LAW

JONATHAN A. SHELDON
GEORGE J. ZWEBEL

A brief survey of the historical development of consumer fraud law in England and later in the United States will place in perspective modern consumer fraud approaches. Nevertheless, the ensuing description is not a careful, scholarly treatise, but, instead, a simplified and deliberately provocative sketch.

Because of the great incompleteness in primary sources and the consequent lack of consensus among scholars, this historical section cannot speak with the same authority as succeeding sections will about present day legal concepts. For example, surviving case law from fourteenth century England comes disproportionately from selected records from the more sophisticated urban tribunals, with little material, if any, from outlying districts. Consequently, legal historians may take issue with some interpretations here, particularly since this section is summary historical description aimed to provoke general readers into viewing present day legal patterns with a broader perspective.

Most modern legislation was enacted to deal with flagrant abuses, while permitting the underlying consumer-merchant relationship to remain one of caveat emptor, or "let the buyer beware." But this notion of caveat emptor was fully articulated only after the 18th century. Feudal English law contained an underlying concept of a "just" or sound price for a sound product. Even though the majority of the population was excluded from the royal courts, other mechanisms regulated the marketplace and enforced this principle of fair business dealings. The Commercial Revolution in the fifteenth and sixteenth century saw the royal courts alter the common law to meet merchant needs, but notions of equity in the marketplace persisted.

Although various forces over the centuries would thwart in various ways this ideal of a just price and a regulated market, not until the development of stock speculation and futures markets in the 19th century did the doctrine of caveat emptor fully replace these earlier notions. Twentieth century consumer fraud legislation, with few exceptions, has not altered this fundamental principle of caveat emptor.

From Jonathan A. Sheldon and George J. Zweibel, "Historical Development of Consumer Fraud Law," pp. 1-17 in Survey of Consumer Fraud Law (which was supported by a grant from the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice).
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