

The Impact of the White-Collar Crime **Unit** on Case Backlog  
at the  
Travis County District Attorney's Office:  
A Program Evaluation of the cooperative efforts  
of the  
Travis County District Attorney, **Sheriff's** Office and the Austin Police Department

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## TABLE OF CONTENTS

<b>CHAPTER 1: INTRODUCTION.....</b>	<b>3</b>
Research Question.....	5
Research Purpose.....	6
Chapter Summaries.....	7
<b>CHAPTER 2: LITERATURE REVIEW.....</b>	<b>8</b>
Introduction.....	8
What is <b>White-Collar Crime</b> ?.....	9
Suspects.....	13
Victims & Costs.....	17
Punishment.....	21
Methods for Control.....	23
Conclusion.....	28
<b>CHAPTER 3: SETTING _ INSTITUTIONAL/LEGAL.....</b>	<b>29</b>
Forming the <b>Unit</b> .....	29
<b>Successful</b> Proposal for Change.....	32
The New System _ Conceptual Framework.....	34
Table 3.1 _ Summary of Hypotheses.....	37
Flowchart 3.1 _ Life-cycle of a Case in the White Collar Crime Unit.....	38
The Laws.....	39
Some Cases.....	41
<b>CHAPTER 4: METHODOLOGY.....</b>	<b>42</b>
Background.....	42
<b>Interrupted</b> Time Series.....	43
Operationalization of the Variables.....	44
Table 4.1 _ Variables & Hypotheses.....	45
<b>CHAPTER 5: ANALYSIS.....</b>	<b>46</b>
Introduction.....	46
Table 5.1 _ WCCU Cases, Fines & Restitution FY 92 _ FY 96.....	46
Number Cases opened & Graph 5.1.....	47
Number of Cases closed without Court Action & Graph 5.2.....	47
Number of Cases Indicted & Graph 5.3.....	48
Number of Convictions & Graph 5.4.....	48
Amount of Restitution & Graph 5.5.....	49
Overall Hypothesis & Chart 5.2.....	49
Possible Explanations.....	50
<b>CHAPTER 6: CONCLUSIONS.....</b>	<b>52</b>
<b>BIBLIOGRAPHY.....</b>	<b>53</b>

## CHAPTER 1

### INTRODUCTION

It is difficult to go through a week without hearing an **awful** news story about some **horrible** criminal act that has devastated the lives of victims and their families. It is now common for many people to be personally acquainted with someone who has been a victim of a crime. We often hear people speaking about how nice it was in "the good 'ole days" when you did not have to lock your doors, you could be kind to strangers without fear, and a person's word really meant something.

The National Bureau of Justice Statistics conducts research on all aspects of crime, including perpetrators, prosecution, victims and punishment. They state: BJS' National Crime Victimization Survey (NCVS) is the Nation's second largest ongoing household survey. Survey data tell us how many rapes, sexual assaults, robberies, assaults, thefts, household burglaries, and motor vehicle thefts U.S. residents age 12 or older and their households experience each year.<sup>1</sup> In the 1995 National Crime Victimization Survey preliminary findings indicated that U.S. residents age 12 or older experienced

**Approximately 39.6 million crimes. Twenty-nine million (74%) were property crimes, 9.9 million (25%) were crimes of violence and (1%) were personal thefts. In 1995 for every 1,000 persons age 12 or older, there occurred:**

- 2 rapes or attempted rapes**
- 2 assaults with serious injury**
- 5 robberies**

**Women age 12 + annually sustained 5 million violent victimizations in 1994. Persons whom the victim knew were responsible for the majority of these victimizations.<sup>2</sup>**

Unfortunately, "the good 'ole days" really are gone. Many factors have influenced the decline in **peaceful** coexistence and accompanying explosion in crime. The growth of

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<sup>1</sup> Information on crime statistics was found at the U.S. Department of Justice, Bureau of Justice Statistics  
Home Page: <http://www.ojp.udoj.gov/bjs>

urban and suburban areas has drawn people away **from** small town life and attitudes.

Now, one cannot always rest assured that they even know who their neighbors are, let alone speak to them on a regular basis. Some might argue that the growth of the United States, burgeoned by a commercial culture, the attitude of which could best be described as “**the** one who gets the most things wins,” has bred discontent among the lower-classes who see their vision of the American Dream gradually moving even further out of their reach.

In any event, avarice has always been part of the mentality of many cultures, including ours. While the Pilgrims who came were primarily fleeing religious persecution, another equally strong pull of the Americas was the dream of making a fortune for oneself. Particularly, the ownership of land continues to be an honored sign of prosperity in our society. However, this dream has been so **fully** imprinted into the psyche of Americans that many, not wanting to wait or work hard to gain the rewards of their labors, have turned to illegal means to bring about the **fulfillment** of their dream.

Others might assert that money has nothing to do with the matter. William Blake states:

**Want of money and the distress of a thief can never be alleged as the cause of his thieving, for many honest people endure greater hardships with fortitude. We must therefore seek the cause elsewhere than in want of money, for that is the miser's passion. not the thief.<sup>3</sup>**

However, regardless of the causes, crime has indeed become a very prominent aspect of our society

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<sup>2</sup> Ibid.

<sup>3</sup> William Blake (1757-1827) English poet, painter, engraver. Letter, 23 Aug. 1799 (published in The Letters of William Blake, 1956)

## Research Question

Along with the rise in violent crimes that our nation has witnessed, there has also been a dramatic expansion in the number and proportion of “**white-collar**” crimes.<sup>4</sup> Indeed, the growth of our society has seen almost an exponential insurgence of forgeries, embezzlements and the like. These are offenses in which the main goal of the perpetrator is to gain some sort of advantage over another, most **often** a pecuniary one. Although the problem of violent crime cannot be discounted in any way, many scholars assert that non-violent white-collar crimes are just as detrimental to the fabric of our society.

While many feel that government is too involved in certain aspects of our lives, most people want government to take an active part in fighting crime. White-collar crime is no exception. The F.B.I. and various other federal, state and local agencies are assigned the task of confronting these legal transgressions.

White-collar crime is not confined to any geographical area. Travis County, Texas began to see an increase in the number of these types of cases after the local real estate bust in the 1980's. The Office of the District Attorney in Travis County was forced to come to grips with increasing numbers of complaints **from** various sources. For example, a major source of complaints came **from** homeowners who were fending off liens **from** subcontractors. These subcontractors had not been paid for the work they had done on the homeowner's house. This occurred because some unscrupulous home builders would take money that the homeowner had paid to close the home, and rather than pay the subcontractors, the home builder would keep the money or use it on another project. In

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<sup>4</sup> Along with Jeffrey Dahmer and David Koresh , there has been the S&L Scandal, the Congressional Check Writing Scandal and many other high-profile white-collar offenses.

the end, the homeowner was stuck with liens on his house by subcontractors who should have been paid by the home builder.

The Office of the District Attorney had case **after** case like this. It soon became evident to members of the District Attorney's office, specifically the lone assistant district attorney assigned to prosecute these cases, Ruth-Ellen **Gura**; her supervisor, the head of the Special Prosecution Division, Claire Dawson-Brown; and Ronnie **Earle**, District Attorney, that the efforts of the office to effectively prosecute these offenses were being hampered by the lack of resources in the District Attorney's budget devoted to this type of crime. Finally, in 1995, the District Attorney's office was able to get **funding** from the **Commissioner's** Court of Travis County for a full-fledged, multi - agency group, the sole purpose of which would be to investigate, and vigorously prosecute, these types of offenses in Travis **County**.<sup>3</sup> Hence, the unit has been funded and operating with a full-staff since January 1995.

This paper examines the effectiveness of this organization, the White -Collar Crime Unit of the Travis County District Attorney's Office. Specifically, the paper addresses the question: Has the implementation of the White-collar crime unit had a significant impact on the backlog of white-collar crime cases in the Travis County District Attorney's office?

### **Research Purpose**

The purpose of this research is threefold: First, the issue of white collar crime is examined in order to reveal the depth of white collar crime in society. Elements of white collar crime discussed include the types of crimes, punishment options for offenders and

methods for controlling this crime. Second, given the knowledge of the prevalence of white-collar crime in our society, the paper seeks to examine how increasing amounts of this type of crime in Travis County spurred the creation of the White Collar Crime Unit. Third, after explaining the **formation** of the White-Collar Crime Unit, the research investigates whether the unit has been effective in reducing the case backlog for these offenses in Travis County.

## **Chapter Summaries**

Chapter 2 encompasses a review of the literature on the subject of **white-collar** crime. The definitions of white-collar crime, suspects, victims, costs, punishment options, and methods for controlling this crime are all examined. Chapter 3 discusses the setting of this project.

Chapter 4 offers the reader an overview of the methodology used to evaluate the data under study in this applied research project. Specifically, the means to examine the hypotheses presented in the conceptual framework given in Chapter 2 is shown. Chapter 5 presents the results of the analysis of the data. Chapter 6 gives a summary and some conclusions about the findings of the analysis. Particularly, the question of whether the White-Collar Crime Unit has in fact succeeded in reducing the backlog of cases is answered.

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<sup>5</sup> The White - Collar Crime Unit is a cooperative effort among the Travis County District Attorney, the Austin Police **Department** and the Travis County Sheriffs **Office**.

## CHAPTER 2

### LITERATURE REVIEW

#### Introduction

The French poet, novelist and noted critic Jules-Arnedee **Barbey D'Aurevilly** wrote in his work *Les Diaboliques*, "The crimes of extreme civilization are certainly more atrocious than those of extreme barbarism; because of their refinement, the corruption they presuppose, and their superior degree of intellectuality."<sup>6</sup> Although **Barbey D'Aurevilly** lived in the past century, he could have very well been speaking about the present. In the past, law enforcement officials and agencies have dealt with the crimes of assault, murder, and other various acts, both physically abusive as well as financially destructive. But with the advent of the information age, and the general progression of society into a more "civilized," "technological" sphere, there has been an almost comparable increase in crimes designed to separate people **from** their money. Criminals are **utilizing** both this new technology (and others' lack thereof), and other less sophisticated means (**e.g.**, forgery) to their advantage.

People in the 20<sup>th</sup> Century have come to call these types of offenses "white-collar" crimes. The nature and types of white-collar crimes as defined by the Federal Bureau of Investigation and scholars, and the characteristics of white-collar criminals, specifically focusing on whether or not there is a certain type of person that would fit the criteria for a white-collar criminal is discussed below. The discussion then turns to costs of white-collar crime, taking into consideration that there are not only the obvious financial damages but other losses as well. The characteristics and status of white-collar crime

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<sup>6</sup> Guterman (1963), p. 299



victims are examined, as well as, the punishment options for white-collar crimes.

Recommended methods for control of this type of crime, including warning signs of white-collar crime are explored to give the reader a broad understanding for the exact nature of these crimes of "extreme civilization."

### **What is white-collar crime?**

The phrase "white-collar crime" was first used by sociologist Edwin Sutherland in his 1940 presidential address to the American Sociological Association. During that time, as is true today, most people associated criminal behavior with privation. They believed a person stole because he or she needed to in order to survive. Sutherland's research focused on criminality and poverty. However, his studies failed to find a relationship between the two. Sutherland found that theories which posited a connection between poverty and crime were invalid. They did not apply to those persons who committed white-collar crimes. He defined white-collar crime as "crime committed by a person of respectability and high social status in the course of his **occupation**."<sup>7</sup> However, there has been a constant debate among scholars since Sutherland's first definition as to what white-collar crime really is.

Although most scholars now agree with Sutherland's assertions regarding the spurious relationship between criminality and poverty still holds true today, they do not agree that white-collar crimes are restricted to or are even associated with the "upper-classes." One scholar asserts that white-collar crime definitions suggest a necessity for research on hidden criminality, which makes up the preponderance of **transgressions**.<sup>8</sup>

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<sup>7</sup> Shapiro (1990), p. 347

<sup>8</sup> Aubert (1968), p. 183

The researcher suggests that the major aspect for research in white-collar crime is not the status of the perpetrator, but the surreptitiousness of the act. Another scholar states that Sutherland's definition of white-collar crime blurs the distinction between perpetrators and their deeds; defining crimes by the characteristics of their perpetrators results in 'an unfortunate mixing of definition and explanation' that prohibits scientific research on the association between misdeeds and social **groups**.<sup>9</sup> This scholar, Susan Shapiro, chooses to define white-collar crime as a "violation of delegated or implied trust, and many of them can be reduced to two categories: (1) misrepresentation of asset values and (2) duplicity in the manipulation of **power**."<sup>10</sup>

Herbert Edelhertz, cited in a House committee hearing, defined 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**."<sup>11</sup> As does Shapiro, Edelhertz seeks to separate the act of these types of crimes **from** the type of person who commits them.

The Federal Bureau of Investigation (F.B.I.) has yet another definition of white-collar crime:

**. . . those illegal acts which are characterized by deceit, concealment, or violation of trust which are not dependent upon the application or threat of physical force or violence. These acts are committed by individuals and organizations to obtain money, property, or services, to avoid the payment or loss of money or services, or to secure personal or business advantage.**<sup>12</sup>

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<sup>9</sup> Shapiro (1990), p. 347

<sup>10</sup> Shapiro (1990), p. 347

<sup>11</sup> "White Collar Crime" (1978), p. 3

<sup>12</sup> "White Collar Crime" (1990), p. 3

While this definition shares many of the same attributes as those posed by Shapiro and Edelhertz, it adds even another dimension. Not only does it include individual wrongdoers, but "organizations" as possible perpetrators in the commission of illegal acts as well.

The federal government, through the F.B.I., investigates different types of white-collar crimes. For the purpose of clarity, some of these crimes are defined below. Government fraud occurs when "individuals or corporations, through deceit or dishonesty, attempt to interfere with the **lawful functioning** of Federal agencies, programs or **projects**."<sup>13</sup> One example of this type of **fraud** would be the inflation of cost estimates for equipment and supplies by government contractors, resulting in higher costs to the government and eventually the taxpayer.

Another area in which F.B.I. investigations has been concentrate is environmental crimes. The high cost of toxic waste disposal has made it tempting for individuals and entities to illegally dump waste in order to avoid paying the price for proper disposal. These criminal acts can lead to "surface water contamination, ground water contamination via seepage, fire and explosion, food chain contamination and **poisoning from** direct human **contact**."<sup>14</sup> While these acts bring about savings for the criminal, they can have devastating health effects for the citizenry. This example illustrates that white-collar crime can involve not only money, but also actual physical harm to people. In this sense, the definition has been expanded.

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<sup>13</sup> "White Collar Crime" (1990), p. 4

<sup>14</sup> "White Collar Crime" (1990), p. 12

Public **corruption** is another area of white-collar crime.

**A public servant, elected, appointed or otherwise owing a duty to honest and faithful public service, may violate Federal law when acting for or on behalf of public office asks, demands, solicits, seeks, accepts, receives or agrees to receive something of value in return for influence in the performance of an official act."**

One example is when a government procurement officer receives money in exchange for awarding a contract to a certain company (i.e., a **"kickback"**).

A final type of white-collar crime consists of financial fraud. These crimes are "schemes to defraud, embezzle, or misapply the money, **funds**, securities or credits of individuals, businesses **and/or** financial institutions by manipulation, misrepresentation, falsification or **deceit**."<sup>16</sup> Because these crimes involve relationships of trust, they generally are not discovered until a great deal of time has elapsed. Additionally, they often require detailed investigation and auditing of a voluminous amount of paperwork. For these reasons, it is often a tedious and time-consuming process to investigate and prosecute these types of transgressions.

At this point it would be beneficial to distinguish between two **different** aspects of financial crime -- theft and embezzlement. A crime can be considered a theft if the offender takes property illegally, with the intent to keep the owner from ever getting the property back."<sup>15</sup> Embezzlement occurs when the suspect at first has a **lawful** possession of the property, but then uses it for **his/her** own purposes. Embezzlers have made a promise to care for the property of another; However, when they take the property for

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<sup>15</sup> White Collar Crime (1990), p. 15

<sup>16</sup> White Collar Crime (1990), p. 23

<sup>17</sup> Bologna and Lindquist (1995), p. 4

, themselves, they breach that trust.'" The notion of a fiduciary capacity brings us back to the concept of a violation of trust, which is the integral part of any white-collar crime.

The definition of white-collar crime has changed greatly since its inception. Once confined to misdeeds by higher status citizens, it now encompasses various acts by which a breach of trust brings about some sort of pecuniary or other benefit to the wrongdoer. Actions as varied as paying off an elected **official** for his **silence**, a lowly bookkeeper writing company checks to his or herself, or a company illegally dumping its industrial waste are **defined** and investigated as white-collar crimes. Whether there is a specific type of person who might be a white-collar criminal, or if there is any sort of defining characteristics for becoming one, is explored in the next section.

## **Suspects**

Differences in the social groupings of criminals are not usually considered when criminal law is written for white-collar **crimes**.<sup>19</sup> **As** has been previously illustrated, white-collar crimes were once characterized by the type of the person committing the act, rather than the act itself. However, while this type of classification was once **useful**, it is now considered inaccurate. Some current research in this area yields clues as to the motivations for persons to commit white-collar crimes.

John **Hagan** and Fiona Kay in their article, "Gender and Delinquency in **White-Collar Families: A Power-Control Perspective**," assert that the type of person who might become a white-collar criminal can be analyzed using 'power-control theory.' 'Power control theory proposes that a **fundamental** instrument-object relationship structures

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<sup>18</sup> Bologna and Lindquist (1995), p. 4

<sup>19</sup> Caldwell (1968), p. 382

family-based relations of **dominance**.”<sup>20</sup> There are two parts to this relationship. First, the researchers believed that mothers were more controlling than fathers. Second, the daughters of a family are the ones most likely to be subject to this controlling behavior. The researchers conducted a survey of children of affluent families living in Crestwood Heights, Toronto, Ontario. Like many young people, these children duplicated copyrighted music for trading with their friends. The researchers wanted to ascertain if there was any relationship between these children's **youthful** violations of the copyright law and their relationship to their family. The researchers believed that:

The theory predicts that sons are freer to [commit **acts** of copyright infringement] **because** they are less controlled than daughters by their parents. This in turn leads **sons** to prefer greater **risks** than daughters, and to perceive fewer **risks** of being caught in delinquent acts, which in turn leads to greater involvement.”

Their research found that adolescent boys were more apt to commit these crimes and get away with them, than their female counterparts. Citing the research of another scholar, **Hagan** and Kay state:

It has been frequently noted that women are **underrepresented** in **white-collar** crime data; and to the extent that they are **represented**, much of this involvement is in highly monitored, money-changing roles (**e.g.**, clerical, sales and service) and associated "pink collar" crimes (**i.e.**, minor **embezzlements**) that are a part of the growing service **economy**.<sup>22</sup>

Another study examined the previous criminality of white-collar criminals. For many years, it had been believed that white-collar criminals were not repeat offenders, However, in the Weisburd, et al. study that consisted of a sample drawn from a previous survey of convicted federal white-collar criminals, it was shown that white-collar criminals **often** have previous criminal records. Except for anti-trust violations, many of the

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<sup>20</sup> **Hagan** and **Kay** (1990), p. 393-394

<sup>21</sup> **Hagan** and Kay (1990), p. 394

<sup>22</sup> **Hagan** and Kay (1990), p. 405

criminals examined had previous records of illegal activity. Ordinarily, it is difficult for someone with a criminal record to obtain work in a bank. However, the data in this sample implied that among bank employees who were offenders, almost one-third had previous arrests. Additionally, the data showed that white-collar criminals began their careers later in life and showed a lower frequency of offending than in other types of crimes. Yet, this lower frequency of offending might be attributable to the fact that white-collar crimes often take longer to be discovered than other crimes because of the complexity of the crime.

Meier and Geis discuss the psychology of white-collar offenders in finance, business and politics. From their research, they find that white-collar criminals "often display little guilt, are egocentric, take greater pleasure in knowing that their victim is unaware of the crime, and are highly **intelligent**."<sup>23</sup> Additionally, they cite the work of Herbert Kelman who gives three methods of thinking utilized by persons who might commit white-collar crimes in the political arena. These are authorization, **routinization** and dehumanization.

Authorization refers to the notion that when criminal, immoral, or corrupt acts are explicitly ordered, tacitly approved, implicitly encouraged, or at least permitted by legitimate authorities, people's willingness to commit or condone them is considerably **increased**.<sup>24</sup> This means that when some people see their supervisor doing something that might not be legal, they do not always assume that their actions are illegal or run to **turn** the person in to other authorities. Rather, they might tend to look the other way or begin

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<sup>23</sup> Meier and Geis (1982b), p. 90-92

<sup>24</sup> Meier and Geis (1982b), p. 92

to commit similar transgressions themselves in the belief that this behavior will be tolerated.

Routinization dilutes accountability and reduces the extent of good **judgment**.<sup>25</sup>

This entails that orders are divided into tasks that are spread among different offices and the steps of each job are **carried** out in a regular fashion. By integrating the questionable activity into the normal routine of an office, the perception of its illegality becomes less pronounced.

"Dehumanization refers to the idea that targets of actions are deprived of their human status so that the principles of morality no longer apply to **them**."<sup>26</sup> In this case, criminals and their underlings will **justify** their offense by labeling those who would seek to turn them in as subversive or dangerous people. This concept applies not only to white-collar crimes, but can be applied to violent crimes as well.

Through all the literature, one may conclude that a white-collar criminal can be anyone, not necessarily those of the "upper-classes". From the accountant who forges a check; to the bookkeeper, who unbeknownst to the employer has been writing an extra paycheck to herself every pay period; to the Chief Financial Officer who sees an illegal way to save his company's toxic waste disposal fees; to the purchasing agent who accepts a bribe for giving a contract to her best friend's company; all these people and many other ordinary people can commit white-collar crimes. Basically, anyone in a position of trust could potentially commit a white-collar crime. Next, the discussion turns to the victims and costs of white-collar crime.

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<sup>25</sup> Meier and Geis (1982b), p. 93

<sup>26</sup> Meier and Geis (1982b), p. 93



## Victims & Costs

In the big picture, all people suffer as victims of white-collar crime, whether the criminal act was committed against them or not. We all realize that crime costs society in many ways, and white-collar or financial crime is no different in this respect. The costs of white-collar crime are enormous. “In 1976, the U.S. Chamber of Commerce estimated that the short-term, direct cost of white-collar crimes to the U.S. economy is no less than \$40 billion annually.”<sup>27</sup> An article from the *Fort Worth Star-Telegram* on October 3, 1995, cited a study conducted by the American Actuarial Association, which estimated that the cost of white-collar crime for businesses was now at a whopping \$400 billion a year.

When a business suffers losses from embezzlement or other types of fraud, any number of things can occur: It can go out of business, putting employees on the street, costing taxpayer's money for unemployment insurance or uninsured visits to the emergency room, not to mention filings for bankruptcy. What if a certain employee cannot find a job? Might this spur some people to crime?

On the other hand, even if the operation stayed in business after a serious **theft**, this often means that the business must charge more for its product, at least for some period of time, in an attempt to offset the damages. Additionally, after some type of fraud occurs, many firms install a tighter security system or other stiffer financial controls and the customer always bears the burden of these increased costs. What about when that company illegally dumps its waste into your water supply? It is the government and ultimately the taxpayer who must pay the costs for cleanup.

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<sup>27</sup> **White Collar Crime (1978), p. 8**

Even though many people may be aware of the victimization caused by white-collar crime, there has been little action to aid victims of white-collar crime. The victim's rights movement was started by victims of violent crime who believed that victims were not being supported by the criminal justice system. These victims believed that defendants were being treated better than the victim of the crime. Their efforts have created some changes in policy such as the Victim and Witness Protection Act of 1982. This act established among other things, a provision for victims to include a victim impact statement in pre-sentencing reports. However, white-collar crime victims have been largely kept out of these policy reforms. This is because violent crimes are often seen as 'more devastating than financial crimes. For many, losing a loved one is more emotional than losing money. Interestingly, this attitude is so pervasive that even the National Crime Survey fails to collect information regarding white-collar crime occurrences. Another scholar notes that, "Criminologists are reluctant to consider that victims are present in less dramatic offenses. Perhaps they **refuse** to admit there is in fact a victim in other **types** of crimes – in consumer fraud – for **example**."<sup>28</sup>

Two scholars have even gone so far as to compare victims of white-collar crimes to rape victims:

Unlike the victims of most crimes, victims of rape and many face-to-face white-collar crimes **do** not arouse the general sympathy **reserved** for those who have suffered harm, loss, or injury. Instead, these victims are often viewed with a **mixture** of skepticism, suspicion, and disbelief. The general incredulity with which these victims are regarded seems to derive from two widely held beliefs: (1) that victimization from fraud and rape does not happen except to those of questionable **character**, and (2) that only those who have shown an exceptional disregard for simple rules of conduct become victims of rape and fraud<sup>29</sup>

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<sup>28</sup> **Walsh** and Schram (1980). p. 34

<sup>29</sup> Walsh and **Schram** (1980), p. 46

The victims of these types of offenses **often** feel that they are further victimized by the system. Uncaring investigators make them feel as if they have committed some sort of wrong.

To make matters worse, victims will **refrain** often from reporting such violations if they have been perpetrated by people in the government or others in positions of authority. They begin to feel that there is no one they can trust. 'Because most white-collar offenses violate trust, they breed distrust, lower social morale, and 'attack the fundamental principles of the American institutions'; [resulting in] (a) diminished faith in a **free** economy and in business leaders, (b) loss of confidence in political institutions, processes, and leaders, and (c) erosion of public **morality**.'<sup>30</sup>

Evidence of this 'distrust breeding distrust' can be found in the American election system. One might support the hypothesis that part of the reason for the extreme voter apathy in the United States is a feeling of distrust of whatever official occupies an elected office. From where did this distrust originate? There are countless stories of one government official after another being accused of ripping off the taxpayers. After a while, the voting public is likely to become quite suspicious and skeptical of all public **officials**.<sup>31</sup>

Another reason why white-collar crime can erode social mores may be the way the crime is dealt with by society. Many researchers have noted that white-collar criminals often have an easier time with the criminal justice system. Often, this occurs because violations and perpetrators are adjudicated through a regulatory agency, **e.g.**, the

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<sup>30</sup> Moore and Mills (1990), p. 415

<sup>31</sup> **One need only look at the Congressional Check Bouncing Scandal, where several members of Congress admitted to writing bad checks for just one example of illegal activity in government.**

Securities and Exchange Commission (S.E.C). A study that surveyed the outcomes of proceedings carried out by the SEC between 1948 and 1972 found that despite the gravity of the transgression, the availability of administrative or civil measures increases the possibility of a judicial response, while significantly reducing the threat of criminal **prosecution**.<sup>32</sup> This is significant because criminal prosecution is the only type of justice that can cause a defendant to go to prison – something that many victims would desperately like to see. However, when a defendant "gets off" with what a victim perceives to be a light sentence, the victim's faith in the institutions of justice deteriorates. Victims will feel that the system has failed them, so why should they continue to trust or support that system?

To stretch this point even further, it has been suggested that the perceived light punishment involved in white-collar offenses could tempt those who might not commit these types of crimes to start or encourage those already engaged in them to continue. This would inevitably lead to the 'lower social morals' that was mentioned earlier.

Victims can have other problems as well. While many individual victims of white-collar crimes would like to see their abusers 'locked in jail with the key thrown away,' these very same victims would like to have full restitution of their stolen property or misapplied funds. However, a person who is locked up in prison does not have the earning capacity of someone who is on the outside earning a living. Therefore, many white-collar criminals might receive probation in order to stay in free society to pay back the restitution they owe. The white-collar crime victim could be described as being stuck between a rock and a hard place.

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<sup>32</sup> Shapiro (1990) [*italicized emphasis added*], p. 360

Another obstacle that might come between victims and the justice they seek is the overall attitude of law enforcement to white-collar offenses. In a study that surveyed district attorneys nationally, white-collar crime was not placed in a category of great importance. The study found that the district attorneys did not see white-collar crime as a pressing concern and most did not envision prosecuting more of these cases in the future.<sup>33</sup> Additionally, the study concluded that “this constituency [people working together to fight white-collar crime] faces a difficult job getting resources for its work. Competing demands for funds and staff for drug crimes often take priority and networking has not really taken hold at the local level.”<sup>34</sup>

White-collar crimes bring about not only monetary losses which cost businesses and consumers alike; they bring about a growing general lack of **confidence** in all our institutions. The next obvious question would be how has punishment influenced the spread of white-collar crime? This question is answered in the next section.

## **Punishment**

As stated before, many prosecutors believe that white-collar crime is not a serious problem. Often this occurs because of the infrequency to which these cases are brought to the attention of authorities. The old notion of "out of sight, out of mind" applies here. However, a big problem with the punishment of white-collar criminals occurs because these crimes are not seen as grave as violent offenses. **This** results in light sentences for offenders. These light sentences could be seen almost as encouragement to reoffend. One

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<sup>33</sup> Benson, et al. (1990), p. 369

<sup>34</sup> Benson, et al. (1990), p. 371

<sup>35</sup> Meier and Geis (1982a), p. 132

scholar has noted, “If the assumption that many white-collar criminals are sophisticated is accurate, then they have probably discerned that it is rare to serve much more than three years in prison, and virtually impossible to serve that much time if they plead **guilty**.”<sup>35</sup> Indeed, the amazing amount of white-collar crime that continues to be reported bears out this very finding.

On the other hand, some scholars feel that for white-collar criminals – strong punishment measures are much more effective at controlling criminal activity than for those people who commit violent crimes. White collar crimes are almost never crimes of passion; they are not emotional or spontaneous, but planned risks taken by rational people. **As** such they are more likely to be controlled by actions based on the concept of utility and the doctrine of **deterrence**.<sup>36</sup> Here, the deterrence doctrine would mean standard methods for punishments such as fines, restitution, and prison sentences.

Another scholar in referring to punishment measures for corporations that are convicted of white-collar crimes states, “One way to proceed is to demand that the corporation **perform** community service as part of its **punishment**.”<sup>37</sup> He believed that more imaginative sentencing might convince corporations that fostering an attitude that promotes white-collar crime was not a viable option.

On the whole, efforts to punish criminals who commit white-collar crimes have had mixed results. While one often hears about a person being sentenced to prison for murdering someone else, prison sentences for white-collar criminals are not that common. Increasingly, there have been attempts to make the public more aware of the damage that

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<sup>36</sup> Braithwaite and Geis (1982), p. 195

<sup>37</sup> Etzioni (1993), p. 156

white-collar crimes inflict on our society. Perhaps this better awareness might lead to stiffer sentencing. In the long run, the white-collar criminal does have some opposition. The next section discusses some efforts for controlling white-collar criminal activity before it reaches a business.

### Methods for Control

There are various means to control white-collar crime. The first involves pre-employment practices which, if effective, filter out would-be criminals from the applicant pool. This could be accomplished in several ways. First, an employer could put a standard message on job applications asking prospective employees to reveal any previous felony convictions. If they had a conviction for embezzlement, just as an example, it would probably be unwise to consider that person for any position in the finance office.

If the employer was concerned about getting accurate information on applications, one might require that all prospective employees obtain a criminal history check and present that with their other paper work. Applicants that had something to hide other than misdemeanors would be wary of completing the process. Additionally, many employers ask that interviewees sign a form that allows the employer to conduct a background check in order to make sure that the information on the employee's application is correct. This information is often **verified** by checking with the County Clerk's office to determine if the person has any convictions or other actions against them, both criminal and civil. This information is a *public* record. It is quite surprising how many employers do not take the

time to check references. However, the extra time and money spent in the **beginning** can save an employer a lot of the grief that could result from hiring the wrong person.

After a person has been hired, there are methods to control for white-collar crime within the organization. First, employers must have more than one person analyzing the books. Time and again, cases are brought in which there was only one person handling the money **and/or** financial records of the organization. He or she was the signatory on the business account, was in charge of processing invoices, issuing checks, and reconciling the bank statement. This sort of arrangement leaves the business owner in a dangerous position. The proprietor has put complete trust over the money in one person's hands. Too often, this trust is misguided and an employee can easily take advantage of the situation.

Many small businesses might argue that they cannot afford to have more than one person doing their accounting work. While this is often quite true, there must be someone or something to ensure the safety of the financial resources of the business. Even if this requires that the owner review the bank statements, it should be done. Placing trust in the hands of one employee is asking for trouble.

In addition, managers might require the periodic rotation of duties in an office. Having the employees work in different areas brings two benefits to small **businesses**. First, cross-training of employees can make the organization more flexible and productive. Business does not have to slow down because someone is out with the flu. Additionally, and perhaps more importantly, it makes it quite difficult for an employee to cover illegal deeds when that employee is moved around. If one person gets to continue the work of another, this might discourage would-be thieves **from** committing crimes.



A **further** internal method is the establishment of written standards and procedures for the handling of accounting work. That is, all procedures should be explained to each employee and they should be notified that deviation from these procedures will not be tolerated. If the business has an established procedure in place, anomalies can be more easily seen and corrected.

One more method to control this type of crime is for victims to **always** report their victimization. Because of the nature of these types of offenses, the victim is often quite close to the criminal. They have established a trust relationship. The victim often cannot believe that their trust has been violated in such a manner. Additionally, if the victim finds out that the trust has indeed been broken, they often desire to find out why. If the suspect is able to come up with a reasonable excuse, the victim might feel sorry for the employee and allow that person to make restitution for what has been taken. As well, the victim might promise not to report this behavior to the police. This failure to report is what allows many white-collar criminals to offend over and over again. While larger institutions or corporations might not be as generous, many smaller entities are. In the end, when an employee moves on to another position, he can take advantage **again** of that employers trust because there is not anything in his record. This failure to report also contributes to the perception of many that white-collar crime is not a "big-deal" or could not happen in "my organization." Attitudes such as these bode well for the would-be criminal.

Some fraud examiners and investigators in the White Collar Crime Unit of Travis County have suggested that the best method for controlling white-collar crime is to make sure the books are audited by an outside source, both periodically and on a surprise basis,

in order to assure that all financial controls are working and that fraud or theft is not occurring.<sup>38</sup> While this may be a quite logical theory, one noted fraud examiner asserts that this type of action may not bring about the desired effect. He writes:

Because of its nature, fraud is extremely difficult if not impossible to detect in many situations. **After** all, a fraud is usually committed by people who are familiar with the relevant **accounting systems** than the auditors are. **As** a result, there will always be cases where auditors can be **fooled**.<sup>39</sup>

In order to detect a fraud, a person must be aware of what is going on in his or her business. However, many small businesses cannot **afford** to have more than one person handling the books. So, when there is only one person in charge of signing checks, reconciling bank statements, and running the accounting software, this one person can easily hide their crimes because of their knowledge of the accounting system.

“In other instances, auditors fail to detect fraud because they do not have the requisite education and background to recognize its **characteristics**.<sup>40</sup> A **business** person may ask an auditor to review the accounting records to determine whether there have been any irregularities. However, if this auditor has not had experience, education or training in the area of fraud detection or if the training has been sub par, the auditor may not find a problem, even if one does indeed exist.

In recent years there has been a push to make independent auditors accountable for the work that they **perform**. One scholar equates the certification of financial health by an auditor to the diagnosis of a doctor:

When a **doctor** certifies to normal health and the client has a dreaded, contagious disease, those relying on the health certificate are justifiably indignant. Similarly, if the auditor states that the

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<sup>38</sup> An often repeated warning voiced by **several** investigators in the White Collar **Crime** Unit.

<sup>39</sup> Wells (1993), p. 93

<sup>40</sup> Wells (1993), p. 93

amounts in the accounts can be relied on, it is absurd to say that they are all right subject to the possibility that undetected fraud may make them all wrong.<sup>41</sup>

So, if an employer has an outside person examine the work done in the accounting office, the employer should make sure that this outside person has the proper training in order to accurately detect the problems, if any.

There are many simple methods that can be utilized to control white-collar crime. **Pre-employment** screening, consistent accounting procedures, diversification of job duties, and oversight **functions** work well to maintain a crime-free environment. Additionally, auditors can be called in to examine your accounts to ensure that all is well. In any event, efforts must be made to effectively oversee employees.

Finally, another method for control of these types of offenses might be the creation of specialized law enforcement units designed specifically to handle white-collar offenses. If more trained investigators, auditors and attorneys became involved in the vigorous investigation and prosecution of these types of cases, there might be a reduction in the occurrence of these transgressions. If anything, potential wrongdoers might become aware that there are specialized groups which will go after persons who commit white-collar offenses. On the national level, the federal government investigates many "white-collar" crimes through the offices of the Federal Bureau of Investigation. On a local level, the increased incidence of white-collar crime has caused some district attorneys to examine the effectiveness of their efforts, or lack thereof, to combat this type of crime. It was this examination that resulted in the creation of the White Collar Crime Unit of Travis County, which is discussed at length in Chapter Three.

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<sup>41</sup> Sorenson (1980), p. 224

## Conclusion

Various aspects of white-collar crime in our society have been discussed. First, types of white-collar crimes that exist and are investigated and prosecuted were examined. Many crimes fall under the **term** 'white-collar,' and that most of these involve a betrayal of trust. Next, characteristics of the suspects of white-collar crimes were examined. It was found that there was little to distinguish them from other criminals. Third, the victims and costs of white-collar crime were reviewed.. In that section, it was found that white-collar crime not only is devastating to its victims in a financial sense, but can be devastating to all of society. Fourth, the punishment options for white-collar criminals were investigated. It was revealed that punishment is not always as effective **as** desired. Finally, some methods for controlling white-collar crime in businesses were contemplated. These preventive measures might be the best way to keep this crime **from** spreading.

In conclusion, one can see that white-collar crime is a far reaching phenomenon that **affects** every person. The costs of white-collar crime can make everything you purchase cost more than it should because of the added costs of legal fees and accounting measures. White-collar crime needs to become more of a focus of interest in our society or we may suffer greatly in the **future from** decreased **financial** gains and a pervasive negative attitude of distrust. The next chapter examines one of the methods of control previously mentioned. It focuses on the formation and subsequent establishment of the White Collar Crime Unit of Travis County. Also discussed are the laws this unit has been asked to enforce.

## CHAPTER 3

### SETTMG: INSTITUTIONAL AND LEGAL

The incidence of "white-collar" crimes has skyrocketed to the point that many agencies have begun to create specialized task-forces to deal with the investigation, trials, and punishments for these crimes. In the previous chapter, methods used to control the spread of white-collar crime were discussed. This chapter examines one of these methods: the creation of a specialized unit. The creation of one such group, the **White-Collar Crime Unit** of the Travis County District Attorney's office is the focus of this chapter. Background information about the Travis County District Attorney's organization before 1995 when the White - Collar Crime Unit formed is provided. Further, the factors contributing to the need for such a group are examined. Then, a conceptual framework for the project is posited. Additionally, the specific penal laws that the unit is most **often** charged with enforcing are highlighted. It is hoped that this **information** demonstrates that the creation of the White - Collar Crime Unit in the District Attorney's office has been long-needed and will provide **future** benefits for the citizens of Travis County and the State of Texas.

#### **Forming the Unit<sup>42</sup>**

In the **six** years prior to the formation of the White - Collar Crime Unit, the Travis County District Attorney's office had assigned two prosecutors and one investigator to deal with all the white-collar crimes in Travis County. This group was called the

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<sup>42</sup> The researcher acknowledges the tremendous contribution of Ruth-Ellen Gura and Darla Davis, Assistant District Anorneys in the White - Collar Crime Unit, who provided the background documentation from which the bulk of this chapter is based upon. These documents included internal memos and the FY 1995 Budget ~~Request~~ for the unit.

**General/Local** section of the Special Prosecution Division of the Travis County District Attorney's Office. The Special Prosecution Division includes the Motor Fuels Tax Fraud Office that prosecutes those individuals and businesses that fail to collect the taxes due to the Comptroller of Texas on motor **fuels**. Other groups in the Special Prosecution Division include the **General/State** Division that investigates transgressions involving State Agencies and their employees; The Insurance section, which investigates different types of insurance schemes; and the Lottery Section, which investigates crimes involving tampering with lottery tickets and other lottery related **infractions**.

All the other cases that could not be sent into one of these **narrowly** defined sections were sent to the **General/Local** section. A list of the typical types of cases that this small group was charged to investigate and prosecute includes: employee embezzlements -- from non-profit organizations, religious groups, businesses of all **sizes**, and by property managers; thefts from family members -- directly or indirectly through investment or other schemes; securities fraud -- in areas such as oil and gas investments; investment fraud -- by companies or get-rich-quick schemes; official misconduct -- by local government employees or officials; and construction frauds -- such as when a homebuilder fails to pay subcontractors **after** work has been completed on a home.

With the continued growth of Austin and Travis County spurred on by the quality of life, rich job opportunities, and academic and **governmental** resources available to those who settle here, this area has become increasingly attractive to all types of individuals, including those who prey on the prosperity that they see in this area of Texas. Consequently, there had been a steady increase in the amount of cases this relatively small group had to oversee. Unlike other sections of the District Attorney's office, **such** as the

Insurance Division, the **General/Local** group did not have adequate resources to effectively handle cases. The Insurance Division has a **staff** of three attorneys, 4 DA Investigators, a paralegal, three secretaries, and one case clerk. However, the three members of the **General/Local** section are responsible for all aspects of each case, **from**, meeting with the victim, the initial investigation, the accounting and auditing of these cases, document control, preparation and prosecution. Each year when the County Commissioners voted on the budget, the **General/Local** group asked for the needed **funds** to hire support **staff**. Each year **from 1989 to 1994**, they had been denied.

While other programs of the District Attorney's office were seen as essential by the Commissioner's Court, the efforts of the **General/Local** section to prosecute white - collar crime were not being supported. Since the **Commissioner's** Court is responsible for approving **all** new budget appropriations, they had to be convinced of the worth of increased funding for the **General/Local** section. The Court had not yet been convinced.

This began to change when big cases such as the Brackenridge Hospital Case came to the attention of the District Attorney's office. This case involved charges that the Chief Financial Officer of the hospital and an outside collection agency had conspired in a complex scheme to steal **from** the hospital. Additionally, there were charges that the financial officer was being paid by the collection agency for referring work to the agency. This case involved over 50 boxes of evidence.

Complex litigation of cases such as this requires countless hours and an expert staff not only to review and analyze financial documents such as bank statements, checks, etc., but also to maintain effective document control. Unfortunately, when the small 3-person office received a big case such as this, it was added to an already overwhelmed

system. Individual victims were sometimes told they might have to wait a **year** before anyone would be able to look at their case. These victims also had very few avenues to turn to since most other law enforcement agencies such as the FBI, would only take certain cases. In the meantime, alleged criminals could continue to defraud the citizenry. Consequently, the hand of justice moved at a **painfully** slow rate for the victims and the three individuals **assigned** to the **General/Local** section.

Each year that the **General/Local** group went without the support **staff given** to others in the District Attorney's office brought an increasing backlog of cases that the group could not possibly complete without more help. The group was often barraged with complaints **from** victims regarding the extreme amount of time their cases were taking before some resolution occurred. As one might imagine, this would bring about an exceptionally low level of service to victims and a total injustice to society.

### **Successful Proposal for Change**

It is the duty of the District Attorney's office to provide "the highest quality of legal representation" for the victims of crimes and to prevent **future** victimization. This goal was not an easily achievable outcome with the **funding** level and resources available to the District Attorney's **General/Local** Section before 1995. So in the 1995 Fiscal Year Budget Request for this section, the **General/Local** Section reiterated its concerns about how inadequate **staffing** threatened its mission. The effort was led by Ruth-Ellen Gura, Assistant District Attorney, and Claire Dawson-Brown, Supervisor of the Special Prosecution Division. They came up with some innovative ideas in their budget proposal in an attempt to persuade the County Commissioners of their need to find four additional



support staff. The staff included a Legal Secretary II, Internal Auditor II, Senior Accounting Clerk, and a Clerk IV (part-time, **25 hrs**). The ideas were as follows.

The first idea was to create a unit (The White - Collar Crime Unit) designed specifically to work on white-collar crimes with an investigator assigned from the District Attorney's office, two investigators from the Austin Police Department and one **from** the Travis County Sheriffs office. With these other groups included, the General/Local section would have access to a richer source of information from groups outside the District Attorney's office. This would eliminate duplication of efforts from one law enforcement group to another and allow for more efficient investigations. Another effect would be to significantly increase the number of investigators dedicated to this unit, without an additional cost to the County. Since these investigators would come from a **shift** in staff at other agencies, there would not be an increased cost to the District Attorney's **office**.<sup>43</sup> This idea was new to the proposal that the **General/Local** group was making, and that caught the interest of the Commissioners.

The second idea placed a mandatory **fine** on all persons entering a plea bargain with the **General/Local** section. This idea was attractive to the County Commissioners because these fines are general revenues for the county. Increased prosecution levels would increase the number and potential level of fines. A minimum fine of **\$2500** for each plea bargain was recommended. This would be in addition to any restitution the defendant might be ordered to pay. If the group got the 35 convictions that it believed it would get

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<sup>43</sup> Although this idea was not entirely new, since it **had** been somewhat implemented in the area of child-abuse.

in the Fiscal Year 1995, that would add up to \$87,500, somewhat off-setting the total budget request of \$130,354<sup>44</sup>.

After the District Attorney's office suggested these two new elements for the budget proposal, and with the news of the Brackenridge Hospital investigation clearly on their minds, the County Commissioners finally granted the request of the **General/Local** Section for increased **funding**. This authorized the hiring of support staff and the beginning of a advantageous relationship among law enforcement agencies in Travis County for the active investigation and prosecution of white - collar crimes. The creation of the White Collar Crime Unit, a cooperative effort among the Travis County District Attorney's office, the Austin Police Department, and the Travis County Sheriffs Office was a long-needed addition to the D.A.'s office, and it was finally implemented in January 1995. The next section discusses the process established by the newly **formed** unit to handle incoming cases. Additionally, an overview of this process serves to establish the conceptual framework for this research.

### **The New System - Conceptual Framework**

The purpose of this section is to give the reader a background for how cases move through the White - Collar Crime Unit of Travis County. First, the White - Collar Crime Unit is contacted by an individual or a company that would like to register a complaint. Then, a **form** is filled out by the potential victim, explaining **his/her** complaint. Once the **form** is returned to the District Attorney's office, an investigator and an attorney will

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<sup>44</sup>**This** amount from the FY 1995 budget included the one-time costs for **desks**, chain etc., with these items removed the actual annual need would be closer to \$117,000. Additionally, this request is for new funding, and does not **include** the salaries of the two ADA's and investigator already assigned and funded

review it to determine whether or not there is sufficient grounds to open a case on this allegation. If the investigator and Assistant District Attorney decide that the office cannot investigate the matter, a letter is sent to the victim to explain why the office cannot take the case. There can be many reasons for this. Among these are: the statute of limitations may have run for the complaint, the complaint might fall under civil rather than criminal jurisdiction or, the complaint is made to the wrong agency. If the investigator and attorney decide that there is a possibility of criminal wrongdoing, they will open a case for investigation. Before the formation of the unit, many cases had to be turned away because of lack of resources. However, because of the recent increase in the number of investigators and support staff, the ability to pursue new cases is enhanced. Therefore, the first hypothesis of this research is:

*H<sub>1</sub>: The implementation of the WCCU will have a positive effect on the number of cases opened*

After the case is opened, the investigator will attempt to gather information and evidence in order to pursue a criminal charge against the suspect. If the investigator is unable to get enough information to prove the case, then the case **will** be dismissed without court action. Before the existence of the unit, this would sometimes occur because the abilities of the investigator were stretched beyond capacity. Also, if a victim failed to provide all the necessary documents regarding **his/her** case to the investigator, this could hamper the investigation as well. Since the establishment of the WCCU added three new investigators to the **General/Local** Section, the ability of investigators to effectively gather information and gather evidence would be enhanced. Hence, the second hypothesis of this research is:

*H<sub>2</sub>: The implementation of the WCCU will have a negative effect on the number of cases closed **without** court action.*

If the investigator succeeds in getting the necessary proof, the prosecutor will present this information to a grand jury for indictment. If the grand jury believes that the evidence presented is sufficient cause to **formally** charge the suspect, an indictment will be issued. Again, previous to the implementation of the White - Collar Crime Unit, the **General/Local** Section was so overburdened with cases that it was difficult to indict as many cases as they have would desired. There was only so much they could do. With the founding of the WCCU, the Assistant District Attorneys and the investigators have more time to work with their cases and can now pursue more cases in general. Accordingly, the third hypothesis of this project states:

*H<sub>3</sub>: The implementation of the WCCU will have a positive effect on the number of cases **indicted**.*

After a case is indicted, the defendant will enter a plea to the court. If **s/he** decides to plea guilty, the court will order some amount of restitution and a fine for the crime, as recommended by the District Attorney's office. In the budget submission for the WCCU, a minimum fine of \$2500 per case was established. Consequently, with the added resources of more investigators and support **staff**, the amount of fines and convictions are likely to increase. The fourth and **fifth** hypotheses are as follows:

*H<sub>4</sub>: The implementation of the WCCU will have a positive effect on the number of cases convicted*

*H<sub>5</sub>: The implementation of the WCCU will have a positive effect on the amount **& fines** received*

If there is evidence to support the previous hypotheses, then the final hypothesis will be supported. This overarching hypothesis states:

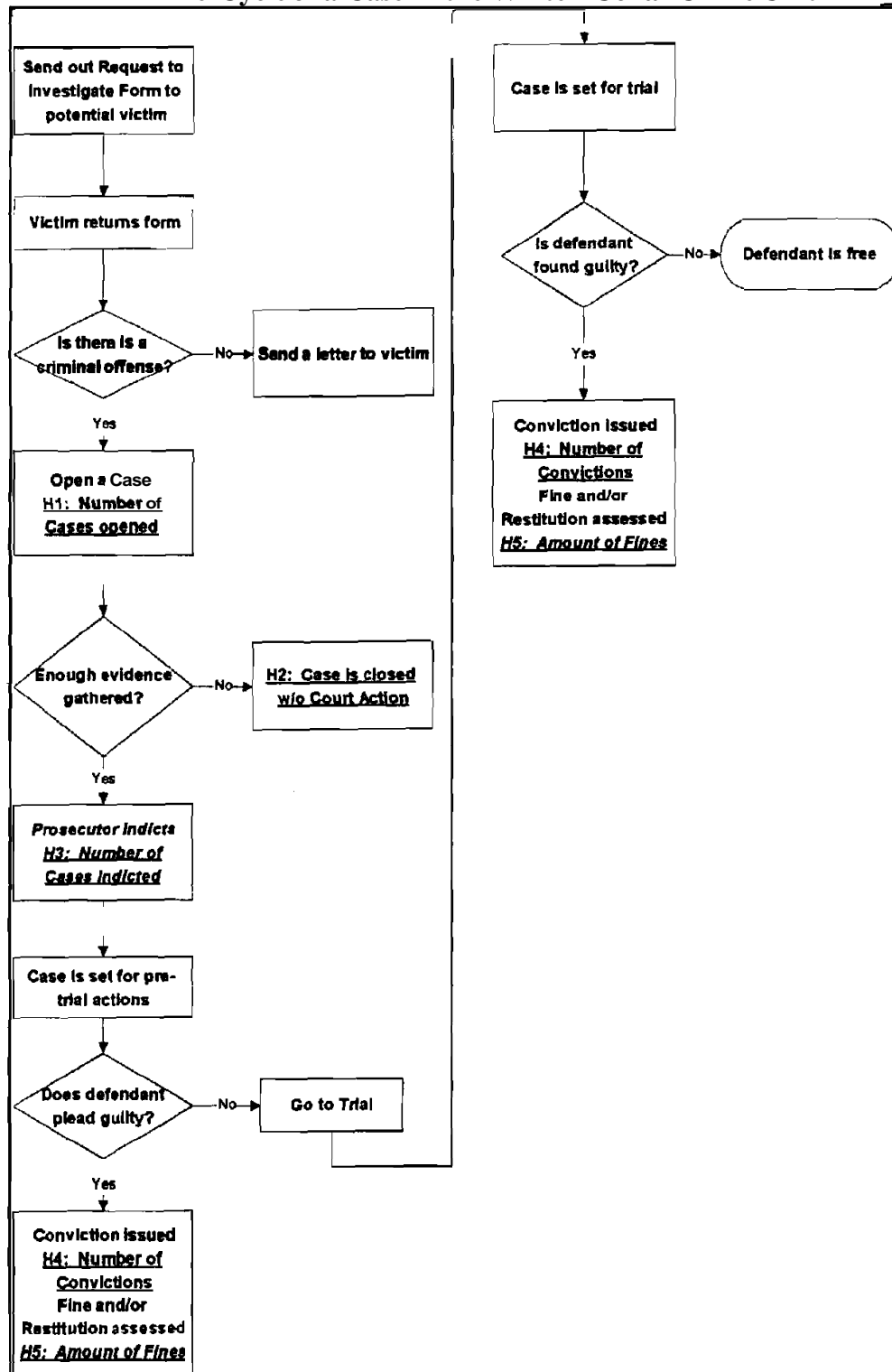
*H<sub>0</sub>: The WCCU will enhance Travis County's ability to resolve white-collar crime cases.*

Before the formation of the WCCU, the task of the **General/Local** Section became increasingly difficult with each added case. This final hypothesis is founded in the belief that there exists now a mechanism to effectively deal with white - collar cases in Travis County. Whereas before the unit's existence (**pre-1995**), there was none. The first hypothesis is based on the assumption that with adequate staffing the number of cases opened will increase because there will be more people to handle the assignments. Additionally, the number of cases indicted will increase as a result of the increased personnel. With more investigators, the number of cases convicted will be positively **affected** for this same reason. The negative effect on cases closed without court action is based on the assumption that fewer cases will be dropped because of inadequate resources. Further, since cases are dealt with promptly, problems associated with the inability to obtain evidence and witnesses because of the age of the case are overcome.

The following chart, Summary of Hypothesis, is an overview of the previously stated hypotheses. The following page illustrates the Life-cycle of a case in the Travis County White Collar Crime Unit (Flowchart 3.1).

<b>Table 3.1 - Summary of Hypotheses</b>			
			<b>Hypothesis</b>
<b>H<sub>1</sub></b>	Est. of Unit in 1995	# of cases indicted	+
<b>H<sub>2</sub></b>	Est. of Unit in 1995	# of cases convicted	+
<b>H<sub>3</sub></b>	Est. of Unit in 1995	# of cases opened	+
<b>H<sub>4</sub></b>	Est. of Unit in 1995	# of cases closed w/o court action	-
<b>H<sub>5</sub></b>	Est. of Unit in 1995	Amount of fines received	+
<b>H<sub>6</sub></b>	Est. of Unit in 1995	# of cases resolved (reduction of backlog)	+

**Flowchart 3.1**  
**Life-Cycle of a Case in the White - Collar Crime Unit**



This research is explanatory in nature. Explanatory research seeks to determine whether there is a causal relationship between two or among several variables. In every policy decision, there is an implied hypothesis. That is, administrators seek to implement programs believing that these programs will remedy some known problem. If policy implies theory, the public administrator tests those theories in the laboratory of **bureaucracy**.<sup>45</sup> This research attempts to determine whether the implementation of the White Collar Crime Unit (WCCU) has decreased the backlog of white - collar cases in Travis County. The next section covers some the more frequently used laws that are enforced in the WCCU.

### The **Laws**

Many of the laws that the White-Collar Crime Unit must enforce are found under Chapter 32 **of the** Texas Penal Code, under the general title **of Fraud**. Section 32.21, Forgery states that "a person commits an offense if he forges a writing with intent to defraud or harm another."\* An example of this type of offense could be if a person were to take the checks of another and forge the name of the victim in order to use the check for **his/her** own purposes.

Another commonly used law is in Section 32.45, Misapplication of Fiduciary Property or **Property** of Financial Institution. This rule reads, "a person commits an offense if he intentionally, knowingly, or recklessly misapplies property he holds as a

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<sup>45</sup> Shields, P. (1996), p. 10

<sup>46</sup> Texas Penal Code (1995), p. 50

fiduciary or property of a financial institution in a manner that involves substantial risk of loss to the owner of the property or to a person for whose benefit the property is **held**.<sup>47</sup> When a property manager of an apartment complex takes the rent checks and uses the money for **his/her** own benefit, rather than giving the money to the property owner, that is a misapplication of fiduciary property.

One more example of a law commonly used in the White-Collar Crime Unit is Section **32.46** of the Penal Code entitled Securing Execution of a Document by Deception. The law reads, “A person commits an offense if, with intent to defraud or harm any person, he, by deception, causes another to sign or execute any document **affecting** property or service or the pecuniary interest of any **person**.<sup>48</sup> An illustration of this could involve a contractor who signs an "all-bills paid" **affidavit** that **certifies** that he or she has paid all the subcontractors that have worked on his job, when in fact they have not been paid. In Texas, a subcontractor that has not been paid can put a lien on a home for the work that the subcontractor did on the home. When the subcontractor is not paid by the primary contractor, usually the home building company, the homeowner is stuck with the bill.

Other examples of white-collar crimes handled by the office include Section **34.10** - Tampering with a Governmental Record, **37.02** - Perjury, **36.09** - Offering a Gift to a Public Servant, and **36.02** - Bribery. These offenses often involve governmental employees or people dealing with government employees. The next section describes some of the cases that the White-Collar Crime Unit has handled.

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<sup>47</sup> Texas Penal Code (1995), p. 57

<sup>48</sup> Texas Penal Code (1995), p. 57



## **Some Cases**

One example of a **successful** white-collar crime prosecution in Travis County is the Robert Conrad case. Robert Conrad was the treasurer of a local nonprofit organization that served as a **drug** and alcohol rehabilitation center for women. He stole money from the organization over a period of time. **After** Conrad plead guilty, the court ordered restitution of \$178,000 upon parole from Conrad's 15 year sentence.

The case of **Jimmie** Williams is another example. Mr. Williams, a local business man acting as the signatory for a large corporation, cashed two-party checks and used the money for his personal benefit. His sentence included probation, 180 days in jail and restitution in the amount of \$303,124.

In this chapter, the formation of the White-Collar Crime Unit and some of the laws that the unit enforces were examined. Additionally, the We-cycle of a case and the hypotheses associated with this cycle were presented. In the next chapter, methodology used to evaluate the effectiveness of the organization is discussed.

## Chapter 4

### Methodology

#### Background

The purpose of this chapter is to examine the methods used to analyze the effectiveness of the White - Collar Crime Unit. The foundations of reflexive and time-series analysis are explained. Finally, there is a restatement of the project hypotheses.

Research in the social sciences **often** requires the use of other techniques than those used in the pure sciences. This occurs because it is much more **difficult** to obtain a controlled environment in real life, than if one were in a lab conducting an experiment. However, this does not mean that social scientists are incapable of obtaining solid research. It does mean that all social researchers attempt to minimize the factors in their research that might be susceptible to outside **influence**.

A great concern to social scientists are factors which effect validity. Here it would be helpful to define the two types of validity that researchers search for in conducting their analyses. External validity refers to the generalizability of the research to other situations. For example, can the findings in this case study be applied to another city? Internal validity "is the degree to which a research design allows the investigator to rule out alternative explanations concerning the potential impact of the program on the target group."<sup>49</sup> Research must control for factors of internal and external validity.

As stated earlier, this project is primarily a program evaluation. The goal of the project is to determine whether or not the implementation of the white-collar crime unit has had a beneficial impact on case backlog in Travis County. In the book, Evaluation in

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<sup>49</sup> Bingham & Felbinger (1989), p. 247

Practice, the authors call this type of evaluation an impact evaluation. An impact evaluation "looks at whether the program's or policy's objectives have been **met**."<sup>50</sup> The authors believe that impact evaluations tend to be more objective because the data can be extracted from records and does not have to come from staff who gather data for the researcher.

### Interrupted Time-Series

The type of research design that was chosen to evaluate the success of the **White-Collar Crime Unit** is an **interrupted** time-series comparison group. This type of research "**examines** whether and how an **interruption** (treatment, program, or whatever) **affects** a social process and whether the observed effect is **different** from the process observed in an untreated group or among different types of **treatments**."<sup>51</sup> The **interruption** which is examined is the creation of the white-collar crime unit. Observations are made of the number of cases closed, opened, indicted and dismissed, before the program came into being and after the program has been implemented.

In their work, *Experimental and Quasi-Experimental Designs for Research*, Julian Stanley and Donald **Cambell identify** eight factors that must be controlled in order for internal validity to occur. These are history, maturation, testing, instrumentation, regression artifact, selection bias, experimental mortality, and interaction. However, a well-formulated study utilizing time-series analysis effectively controls for these factors.

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<sup>50</sup> Bingham & Felbinger (1989), p. 5

<sup>51</sup> Bingham & Felbinger (1989), p. 110

This method is considered a strong one because it eliminates the bias present “when one makes only one observation of a **phenomenon**.”<sup>52</sup> Because data is collected over time, one is able to determine whether or not there has been a real trend.

### **Operationalization of the Variables**

The methodology for this research consists of an analysis of existing data in the form of yearly totals **from** the **DA’s** office that document how many cases have been opened, closed, dismissed, convicted, etc. **from** 1992-1996 for white-collar crimes. This data is kept on file as a normal function of the District Attorney's Office of Travis County. This data includes the time period before the creation of the unit and after its creation. With this data, the research attempts to determine whether the number of cases cleared (**e.g.**, opened, dismissed, closed, convicted) was aided by the creation of the White-Collar Crime Unit. The independent variable is the implementation of the unit. The dependent variables are the number of cases closed, the number of cases convicted, the number of cases opened and the number of cases dismissed. The unit of analysis are each individual case. All the dependent variables are ratios. Ratios are levels of measurement that have an equal distance between each unit with a zero as a starting point. These variables fit that definition.

Additionally, the research methodology can be described as reflexive. That is a design that, “**Uses** the target group of the program as its own control.”” The hypothesis is that there is a positive relationship between the establishment of the unit and the number

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<sup>52</sup> Bingham & Felbinger (1989), p. 110

<sup>53</sup> Bingham & Felbinger (1989), p. 173

of cases indicted and convicted. Additionally, the hypotheses purport a positive relationship between the creation of the unit and the number of cases opened. Finally, the project hypothesizes a negative relationship between the establishment of the unit and the number of cases closed without court action. These hypotheses are summarized in the following called Table 4.1.

<b>Table 4.1 - Variables / Hypothesis</b>			
	<b>Independent Variable</b>	<b>Dependent Variable</b>	<b>Hypothesis</b>
<b>H<sub>1</sub></b>	Est. of Unit in 1995	# of cases indicted	+
<b>H<sub>2</sub></b>	Est. of Unit in 1995	# of cases convicted	+
<b>H<sub>3</sub></b>	Est. of Unit in 1995	# of cases opened	+
<b>H<sub>4</sub></b>	Est. of Unit in 1995	# of cases closed w/o court action	-
<b>H<sub>5</sub></b>	Est. of Unit in 1995	Amount of fines received	+
<b>H<sub>0</sub></b>	Est. of Unit in 1995	# of cases resolved (reduction of backlog)	+

The data for each of the dependent variables both previous to the establishment of the unit and after the establishment of the unit is examined. In this sense, the research is an impact evaluation of the intervention of the WCCU. In the next chapter, these hypotheses are tested through an inspection of the data obtained from the Travis County District Attorney's Office.

## Chapter 5

### Analysis

#### Introduction

This chapter tests the five hypotheses previously presented. This data is used to determine if there is sufficient evidence to support the overarching hypothesis of a reduction in White - Collar Crime case backlog. The researcher received the following historical data regarding the progress of cases at the Travis County White-Collar Crime Unit. (see Table 5.1)<sup>54</sup>.

**Table 5.1**  
**White Collar Crime Unit Cases, Fines and Restitution Totals FY 94-96**

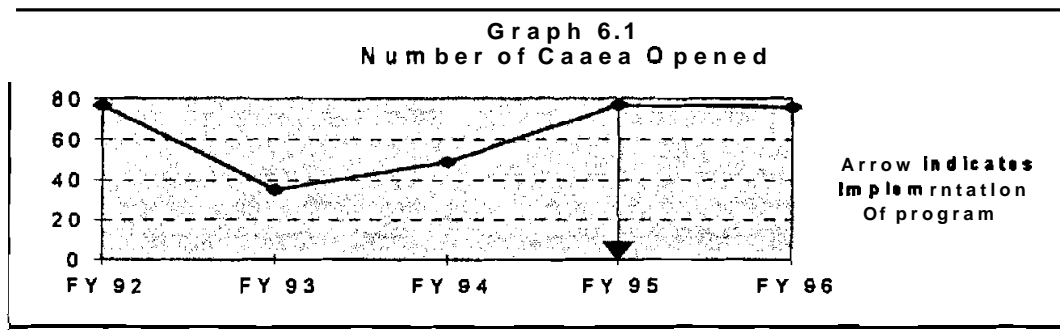
MEASURES		FY92	FY93	FY94	FY95	FY96
H <sub>1</sub> ?	CASES					
	Number of Complaints received	116	72	95	138	132
	Number of Investigations Opened	77	35	49	77	76
	Number of Indictments	35	16	27	33	21
	Number of Cases closed w/o court action	42	30	27	51	73
H <sub>2</sub>	Number of Convictions obtained	20	24	21	16	26
FINES & RESTITUTION						
H <sub>3</sub>	Amount of fines ordered	\$13,000	\$4,500	\$9,000	\$37,500	\$26,000
	Amount of restitution ordered	\$804,717	\$1,010,377	\$525,057	\$1,049,501	\$857,274

The bold line between FY 1994 and FY 1995 indicates the establishment of the WCCU

<sup>54</sup> The information for this table was received from Karen Kiker, a paralegal in the Special Prosecution Division. She is responsible for maintaining these statistics. The researcher thanks her for the assistance she has provided.

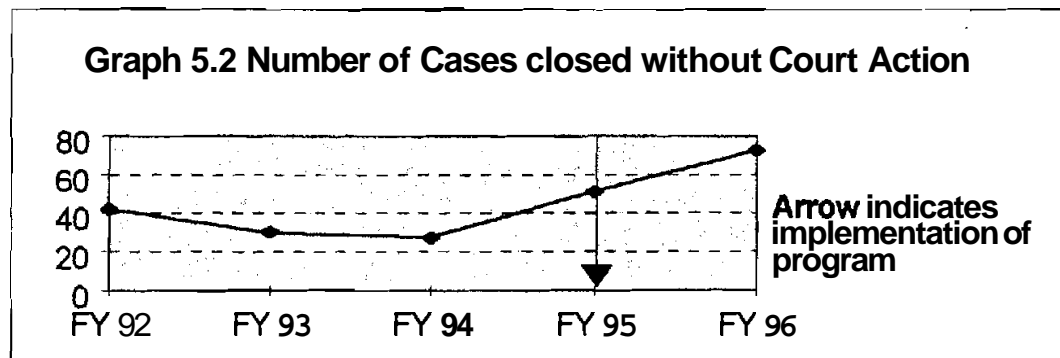
### Number of Cases opened ( $H_1$ )

When comparing the number of cases opened previous to **FY 1995** and after the implementation of the program, one sees that the amount of investigations opened has increased from **49** in **FY1994** to **77** in **FY 1995**. Almost the same amount of investigations were opened in **FY 1996** as compared to the previous year. Therefore, the data suggest a support of the hypothesis for increasing the number of cases opened after the implementation of the WCCU. The following is a graphical representation of this data.



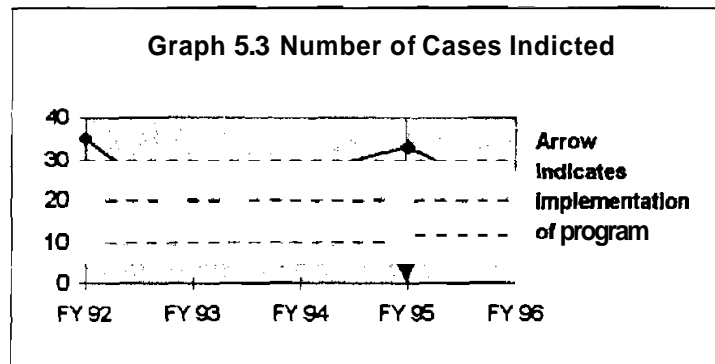
### Number of Cases Closed Without Court Action ( $H_2$ )

Although this hypothesis stated that the number of cases closed without court action would decrease, this hypothesis was not supported by the data. The number of cases closed without court action increased from **27** in **1994** to **51** in **1995** and **73** in **1996**, after the implementation of the program. Graph 5.2 illustrates this trend.



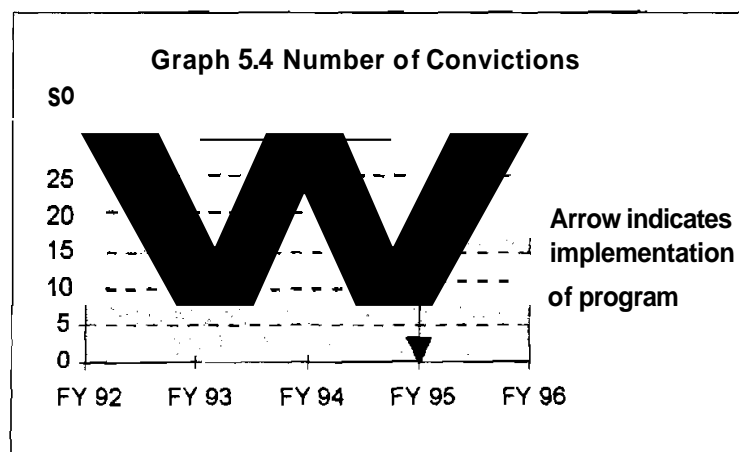
### Number of Cases Indicted ( $H_3$ )

This hypothesis states that the number of cases indicted increases with the implementation of the unit. The data for this hypothesis are mixed. After an initial increase from 27 cases indicted in FY 1994 to 33 in FY 1995, this number dips to 21 in FY 1996.



### Number of Convictions ( $H_4$ )

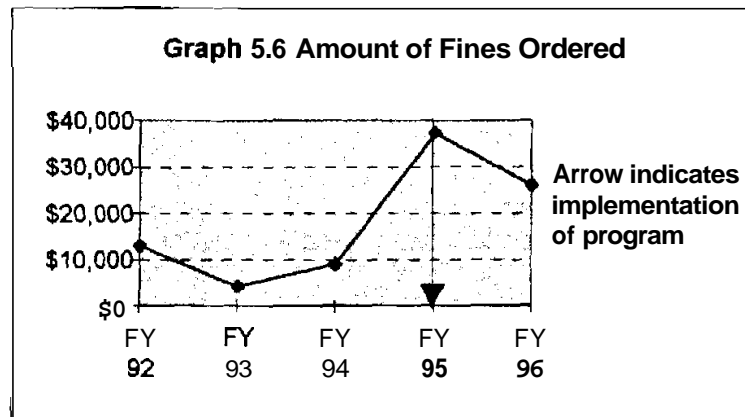
This hypothesis stated that the number of convictions would be positively influenced by the implementation of the unit. However, the results for this hypothesis are mixed as well. After an initial decrease from 21 convictions in FY 1994 to 16 convictions in FY 1995, the number of convictions received increases to 26 in FY 1996.





### Amount of Fines (H<sub>5</sub>)

It was hypothesized that the amount of fines would increase because of the program implementation. The data support this hypothesis. Fines ordered increased from \$9000 in FY 1994 to \$37,500 in FY 1995. Although they decrease in FY 1996 to \$26,000, this number is only \$500 less than the totals for FY 1992 - FY 1994 combined



### Relative Success of Unit (H<sub>0</sub>)

The following chart summarizes the findings of the data analysis.

**Chart 5.2 Summary of Findings**

Hypothesis	Evidence (Supports/Does not Support/Inc.)
H <sub>1</sub> : Number of cases opened will <b>increase</b>	Supports
H <sub>2</sub> : Number of cases closed w/o court action will <b>decrease</b>	Does not Support
H <sub>3</sub> : Number of indictments will <b>increase</b>	Inconclusive
H <sub>4</sub> : Number of convictions will <b>increase</b>	Inconclusive
H <sub>5</sub> : Amount of <b>fines</b> will <b>increase</b>	Supports
H <sub>0</sub> : Positive change for white-collar cases	<b>Inconclusive</b>

Since three of the five hypotheses are found to be either not supportive or inconclusive, the impact of the White - Collar Crime Unit is, as yet, inconclusive. This finding is quite natural since the data **from** which the conclusions are drawn is limited. Because the

program is so new, there are not as much data as would be desired for a definitive analysis.

### **Possible Explanations**

However, some possible explanations can be offered for a few of the findings. It was hypothesized that the implementation of the unit would cause a decrease in the number of cases closed without court action (H<sub>2</sub>). The belief was the increase in work force and other resources would decrease the amount of cases that had to be dropped for either lack of evidence or a statute of limitations which has been **exceeded**<sup>55</sup>. It was believed that this was probably a negative occurrence and one that would be remedied by the formation and actions of the unit.

However, the attorneys of the white-collar crime unit informed the researcher that closing cases without court action was not always a bad thing. They stated that on some occasions, a case might be dropped even when there has been enough evidence gathered. A deal might be made between the victim and the suspect, **brokered** through the District Attorney's office. The suspect would pay back whatever has been taken and the victim would not press charges in a formal indictment. In this way, the victim gets back whatever was taken **from** him or her and the courts are not involved in the process. Some might argue that this "**brokering**" is not well-advised. However, it would create less of a burden on the court system while still giving the victim his or her property.

The reasons behind the numbers of indictments (H<sub>3</sub>) and the number of convictions (H<sub>4</sub>) being inconclusive might stem **from** the length of time involved in the prosecution of

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<sup>55</sup> Webster's Dictionary defines a statute of limitation as, "A statute assigning a certain time after which rights cannot be enforced by legal action or offenses cannot be punished." Therefore, if a case has not been indicted by the time the limit runs, legal action cannot be taken.

white-collar crime cases. Simply because a case has been opened in one year does not mean that this case will be indicted or convicted in that same year. **Often**, it might be several years before enough evidence has been gathered before a case can be presented to a grand jury for indictment. Consequently, the inordinate amount of time it takes to **fully** investigate these cases might cause a significant lag in the realization of positive effects for indictments and convictions. In any event, a longer study over several years might yield more definitive answers as to whether the unit has been effective.

## Chapter 6

### Conclusions

What **can** be **said** about the implementation of the **White-Collar Crime Unit** in Travis County? The results are mixed. While it did improve the amount of investigations opened and the number of indictments issued, the data for the convictions obtained and cases closed without court action are not what was expected. **The** Austin **metropolitan** area continues to grow, and with this growth, crimes of all types are bound to increase. However, I feel that the mere presence of this unit bodes well for the prosecution of white-collar crimes in Travis County. There now exists a better avenue for victims to seek assistance. **One** suspects that if more units such as this were formed, the amount of white-collar crime **might** be alleviated.

However, the biggest problem that white-collar crime faces in the United States is not a lack of awareness, but the overshadowing of this **type** of crime's enormously detrimental effects on the American people, by the other more violent crimes which pervade our society. When administrators are faced with **funding** decisions regarding crime, it is the violent criminal that is more important in their minds, rather than one that commits a white-collar offense. What needs to be emphasized to all citizens is that white-collar crime, while not necessarily as notoriously ugly as violent crimes, **can** be as damaging to persons. They can lose their whole livelihood.

The researcher hopes that more efforts are made to tackle the problem of white-collar crime. **If the** United States is to **remain** at the forefront of industrialized nations, this problem must be addressed. Political lip service does not substitute for adequate **funding** of needed programs. As Ben Franklin is quoted, "A penny saved is a penny earned." Every penny that the American taxpayer can save through the reduction of white-collar crime will reap greater economic benefits in the future.

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