The Infiltration of the New York's Financial Market by Organised Crime: Pressures and Controls

By

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DEDICATION

To

Annetta, Stanley, Eileen, Joshua,
Mom & Dad

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ABSTRACT

This research examines the relationship between some features of the American criminal justice system and the infiltration of organised crime groups into New York's financial district to commit securities fraud. The primary focus of the study is to determine if and to what extent the present criminal justice strategies designed to counter organised crime activities have had an impact on the entry of New York's five Italian-American crime families and Russian-origin criminals into the securities market. There are scattered works and articles on organised crime related frauds in the stock market, but there is no thorough empirical study on the movement of organised crime groups from traditional rackets into the securities market in New York.

This research was undertaken to remedy the paucity of criminological knowledge on the activities of organised crime groups in the U.S. investment sector and on the factors underlying this. Sensitive and extensive data on major organised crime cases on Wall Street are analysed throughout the work. The study utilised a combination of interviews, existing source documents and written materials. Several interviews were conducted of known organised crime members, enforcement personnel, informants and experts on organised crime. The source documents that were used in this study comprised of public and private domain records from investigating and prosecuting bodies within the criminal justice system.

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CHAPTER ONE

INTRODUCTION

This study examines the penetration into the securities market by the five major Italian-American crime families and the Russian-origin criminals in New York, and the relationship between this and control activities that have taken place within the American criminal justice system.

During my assignment to the Chief of Department's office, in the New York Police Department (NYPD) in 1998, I came across an impact assessment communication from the NYPD Intelligence Division to the Chief of Department detailing the movement of the five Italian-American organised crime families in New York from traditional rackets in gambling, extortion, drug distribution, waste management, and prostitution into the securities market on Wall Street. The confidential intelligence report raised some concerns that extensive devotion of law enforcement and prosecutorial resources to the investigation of organised crime groups from 1992-1997 may have forced traditional Italian-American organised crime families in New York to search for newer markets for alternative income streams rather than simply to desist from their criminal activities.

After reading the "intelligence briefing report," as it is called within the department, I began to embark on this project to explore the relationship between the level of law enforcement and prosecutorial activity in the stock market by the American criminal justice system in relation to traditional organised crime activities and the commission of securities fraud by organised crime in New York. One of the issues implicit in this is to determine if the current approach by government agencies to combat organised crime activities unwittingly enticed the syndicates to shift their activities to less well policed white-collar crime. It could very well be that they would have been attracted to the stock market anyway in an effort to diversify their means of obtaining funds, even in the absence of any potential threat from law enforcement agencies over their pre-existing activities. Nevertheless, the absence of prior indications that they had done so suggests *prima facie* that control activities rather than a 'natural' search for new markets may have been the precipitant. From both a criminological and police perspective, one interesting aspect of this is whether or not they took any serious extra risks in doing this outreach that involves collaboration with non-Italian Americans, such as Russians. The findings of this study shed some light on this area of concern.

The subjects of the study were members of the Vito Genovese, Carlo Gambino, Gaetano Luchese, Joseph Colombo and Joseph Bonanno Italian-American crime families in New York and Russian-origin criminals in New York. There are 890 "made" members of the Italian-American organised crime and 618 Russian-origin criminals in the organised crime data -base maintained at the New York Police Department's Organised Crime Investigation Division, which reflects the traditional construct of "organised crime" around which U.S. (and much international) enforcement is organised. An adequate understanding of the social organisation of organised crime must be at the heart of criminological research and practice (Waring and Weisburd 2000). Even the strategies designed to combat securities fraud will not succeed without an adequate knowledge of how securities fraud operations are conducted. This study aims to make a substantial contribution to this understanding.

The study will also provide an empirical account of how organised crime moved in on commerce, their activities within the financial industry, and the role that government agencies played in an effort to reduce securities fraud. In the light of the analysis, the study will design strategies for addressing some loopholes in securities legislation and prescribe remedies aimed at combating the threat that securities fraud by corporate and organised crime fraudsters pose to investors.

MAIN HYPOTHESIS

There is a positive relationship between securities fraud by organised crime and enforcement of racketeering legislation by the American criminal justice system.

SUBSIDIARY HYPOTHESIS:

1. As law enforcement activities increase with respect to traditional crimes, the Italian-American organised crime groups will become more diversified in their operations. As law enforcement activities increase with respect to traditional crimes, Italian-American organised families will increasingly shift into white-collar crime. However, the families lack the internal skills to conduct these crimes and therefore will be required to form alliances with individuals or groups from other sources.

RESEARCH QUESTIONS

The central research questions are as follows:

1. What has been the impact of the criminal justice system on Italian organised crime families in New York's financial district? (The criminal justice system will be operationalised in chapter two).
2. Is there a positive relationship between activities within the criminal justice system and the commission of securities fraud by traditional organised crime groups?

3. Will organised crime involvement in inter-personal crimes for direct and indirect economic gain decrease to the extent that extra income is generated from securities fraud?

4. What are the preconditions that enabled New York's Italian-American crime families to infiltrate the securities industry and why did this industry attract their attention both at all and at this particular time?

5. What is the attitude of the law enforcement community towards securities fraud, and what challenges do they face in their effort to detect, investigate and combat securities fraud on Wall Street?

6. Are the news media reluctant in reporting securities fraud and if so, of what types and why?

7. What strategies should law enforcement agencies use in the future to address the securities-related challenges posed by the Italian-American crime families and Russian-origin criminals in New York?

8. What is the expenditure on enforcement and prosecution of securities fraud?

9. How did organised crime groups acquire the skills that are needed in perpetrating this form of white-collar crime?

The general aim of the research is to investigate the link between organised crime infiltration of the securities market on Wall Street and the role that our criminal justice system has played in helping to change the direction of organised crime in New York. This work started with the assumptions that law enforcement efforts aimed at combating organised crime have, to some degree, led these criminal groups to seek refuge in securities fraud, which historically has had little attention from law enforcement.

The survival of a nation depends largely on its economic strength and stability. Financial institutions are conduits for economic growth and the securities market is a medium by which wealth is generated. If the financial engine that was designed to create wealth is undermined by organised crime, then the structure upon which our nation's economic interest is anchored may well be on its way to collapse. However, it is possible that the financial engine that drives the economy is more likely to be undermined by the crooked elite and powerful firms with major portfolios on Wall Street rather than by the Italian-American organised crime gangs. As mentioned above, this study examines the relationship between the activities of traditional organised crime groups and certain features of government actions designed to reduce the crimes with which they have traditionally been associated.

Following this introductory section, chapter one reviews some of the literature on white-collar crimes and provides a brief overview of the history of financial fraud. The chapter also discusses securities fraud as an emerging trend and a new market for traditional organised crime and offers some background information on the enactment of the Securities and Exchange Acts of 1933 and 1934, the first attempt by the United States government to regulate the securities industry. This chapter concludes with a definition of organised crime and an overview of the history of organised crime in the United States.

LITERATURE REVIEW

Ruggiero (1996) argues that organised crime syndicates are entrepreneurs driven mostly by the desire for profit and economic gain. Organised crime syndicates are employing legitimate business methods (such as meeting proper registration requirements) to infiltrate the financial industry and the securities market. Some researchers arguing within the framework of the general theory of crime (Hirschi and Gottfredson 1993) have made persuasive arguments that distinctions between white collar crimes committed by traditional organised crime families and white-collar crimes committed by legitimate corporations are somewhat artificial since both groups are principally gain-motivated (Ruggiero 2000; Staw and Swajkowski 1975; Clinard and Yeager 1980; and Smith 1980).

But Reed and Yeager (1996), inter alia, questioned the adequacy and generalizability of the general theory of crime. They argue that when organisational offending (by which they mean primarily offending by otherwise legitimate organisations) is included in white-collar crime, empirical and theoretical limitations begin to emerge and typologies of crime therefore become inadequate.

However, many scholars agree that both corporations and traditional organised crime are involved in the commission of white-collar crime (Ruggiero 2000; Hobbs 2001; Ruggiero 1996; Albanese 1982; Block 1983; Reuter 1983; Jenkins and Potter 1985; Clinard 1987; Chambliss 1988; Pearce 1976; Block 1991; and Naylor 1996). Historically, the term white-collar crime was associated with legitimate corporations, government institutions, employees, and other actors having business dealings with these sectors (O'Keefe 1966; Geis and Edelhertz 1973; Schrager and Short 1977; Box 1983; Braithwaite 1985; Hagan 1988; Cook 1989; Shapiro 1990;

Van Duyne 1993). But some scholars have now accepted the distinction between offences that are committed by organisations, thereby differentiating occupational crime from corporate crime (Levi, 1987; Croall, 1992).

A collection by Geis and Meier (1971) entitled "White Collar Crime" includes sub-sections on corporate white-collar crime, commercial and professional white collar-crime, and political white-collar crime. Some works by Ermann and Lundman (1987) focus on corporate and governmental deviance, and specific studies have focused on particular industries like the pharmaceutical industry (Braithwaite 1984).

Some British works within the last twenty years have covered areas as diverse as financial crimes (Levi 2003), business crime (Levi, Morgan and Burrows 2003, Levi and Naylor 2000), youth gangs (Hobbs 1997), money-laundering (Levi 2002, Gold and Levi 1994), pollution (Richardson et al. 1982; Hawkins 1984), commercial fraud (Levi 1987), corruption (Doig 1984), crimes against consumers (Croall 1988), police corruption (Newburn 1999), income tax evasion (McBarnet 1984; Cook 1989), drug trafficking (Ruggiero and South 1995), health and safety regulations (Pearce and Tombs 1990), the growing area of fraud in the European Community (Tutt 1989; Nelken and Passas 1991), and policing of fraud (Doig and Levi 2001). "Business Crime" (Clarke, 1990) includes separate chapters on employee crime, insurance fraud, taxation, liquidations, financial institutions, health and safety at work.

Pearce (1976) differentiates between offences that threaten the interest of capitalism and those which are primarily committed in the course of capitalist activity. The former, he argues, are dealt with more harshly than the latter. This means that not all white-collar crimes have equal immunity from prosecution. If certain crimes, for example embezzlement and other financial fraud, are left without effective measures to combat them and large increase in such fraudulent activities result, then such episodes can lead to the erosion of public confidence in the stock market. These, according to Pearce, should mean that they will be heavily suppressed. However, one difficulty is in deciding what does and does not "harm the interest of capitalism".

Other studies on white-collar crime have investigated the involvement of organised crime in money laundering (Chauking 1991; Levi 1994; Gold and Levi 1994; Naylor 1994; Beare 1996; Dumbacher 1995; Robinson 1996; Levi 1997; Rawlinson 1998), credit card frauds (Levi 1992, 1998, 2000, 2003), oil and petroleum industry schemes (Pasztor and Gutfield 1987; Getschow and Petzinger 1984; Block 1997), offshore banking (Cook 1980; U.S. Senate Hearing on Offshore Banking 1983; Block and Scarpitti 1986); environmental crimes (Hawkins 1984); hazardous waste (Hammit and Reuter 1988); internet fraud (Alexander and Munro 1996; Drinkall 1997), human trafficking (Schloenhardt 1999; Zhang and Gaylord 1996), financial crimes (Levi 2003; Ekblom 2003a; Naylor 2002; Croall 2002; Jacobs 1999), illegal drug distribution (Paoli 2002; Pearson and Hobbs 2001), tax fraud, robbery, arms trading, extortion, illegal gambling, prostitution and child pornography, cyber crime, terrorism, counterfeiting and human trafficking (Europol; UK National Criminal Intelligence Service 2000; Naylor 2003), insurance fraud (Garcia 1988; Bologna 1993; Bologna and Shaw 1997), mail fraud (Dreeben 1988), securities fraud (Langevoort 2001; Shapiro 1980; Pitt and Shapiro 1988; Kornbluth 1992) and evasion of excise duty on alcohol and tobacco (Levi 2003).

This study will focus on the infiltration of the securities market by traditional Italian-American organised crime groups in New York. Although this empirical work is primarily concerned with the infiltration of the stock market by members of the five Italian-American organised crime families in New York, it will also shed some light on the connections between them, Russians and Russian-origin criminals in the securities market on Wall Street.

HISTORY OF FINANCIAL FRAUD

Financial frauds are not new. Because of the difficulty, even impossibility, of disentangling fraud rates from the propensity to expose and act against them, comparing fraud rates over time and across cultures is a hazardous process. Spray (1964) reported that in 1285, King Edward I gave the Court of Aldermen authority to police and regulate the growing brokerage industry in the City of London. The Industrial Revolution further accelerated developments in the financial sector and created more opportunities for fraudsters in England. During the sixteenth century, it was common for brokers and bankers to manipulate the prices of commodities and stocks.

The Bank of England was created in 1694 to finance the national debt, and government securities issued by the Bank and traded on the Stock Exchange, soon became an important source of investment. These securities were also the source of some of the earliest white-collar crimes in England (Robb 1992:5).

In 1697, the British Parliament enacted additional legislation to curb these abuses (Spray 1964). "For most of the Victorian period, the English banking system was riddled with fraud and mismanagement. Each wave of bank failures brought forth new revelations of criminal conduct. The financial crisis in 1857 and 1866 and the collapse of the City of Glasgow Bank in 1878 were but the high-water marks in an age of widespread commercial dishonesty" (Robb 1992:5).

Financial frauds were not particular to the United Kingdom. In the United States, more than half of the $50 billion in new securities that floated in the American Stock market during the 1920s became worthless due to the collapse of confidence in the stock market (Bequai 1979). In 1927, a subsidiary firm of the National City Bank traded $90 million worth of bond issues for the Republic of Peru in the United States. The investing public was unaware that Peru's financial state was in a very poor condition. Within two years, the bonds were worthless, and thousands of investors lost their money (Carmier 1962)

About the same time, the Libbey-Owens-Ford Company created fictitious demands for their company's stock. By the time the fraud was discovered, several investors were defrauded of millions of dollars. Among the perpetrators of the Libbey-Owens-Ford stock fraud were some of Wall Street's most respected and most prestigious financial institutions (Block 1962). Stock frauds were so common in the 1920s that the prices of numerous stocks listed on the New York Stock Exchange(NYSE) during that time were said to be manipulated (Bequai 1979).

One of the most common financial frauds of the 1920s was the "Ponzi Scheme," named after Charles Ponzi who first initiated it in 1920. Ponzi's fraud involved the use of Spanish postal reply coupons, which sold in Europe for one cent, and could be redeemed in the United States for ten cents. Charles Ponzi offered potential investors a fifty percent return on their investments within a sixty-day period. Over forty thousand people invested a total of more than $10 million in these Spanish postal coupons, expecting a fifty percent return as Mr. Ponzi had indicated in his prospectus. It was later learned that Charles Ponzi had misled investors. Although he was subsequently prosecuted and imprisoned, all the investors lost their money (Business Week 1974). Fraudulent schemes in various forms prevailed within the U.S. financial market until October 26th, 1929, known as "Black Tuesday" within the securities industry, when the stock market finally collapsed. It was apparent to many investors at the time that the crash had been caused by lack of adequate disclosure of the true financial status of publicly held corporations.

Between 1929 and 1933, more than a hundred NYSE brokerage houses were found to have committed securities fraud. Among those involved in these financial frauds were highly acclaimed financial institutions such as the Chase National Bank, the Sherman Corporation, and the J.P. Morgan Company. Also involved in financial schemes during the 1920s and 1930s were well-known figures like Arthur W. Cutten, a member of the Chicago Board of Trade, Raleigh T. Curtis of the New York Daily News, Charles F. Adams, Secretary of the Navy in 1930 and Walter P. Chrysler, the founder of the Chrysler Corporation (Bequai 1979).

Financial fraud in corporate America eventually led to public outcry and a Senate hearing on the securities market in December 1931. Following the congressional hearings, the federal government enacted a series of laws, beginning with the Securities Exchange Act of 1933 to curtail the problem of white-collar crime that was plaguing the business community and the investing public directly, and the general public more indirectly (direct securities ownership being less common then than today, and pension fund holdings being less developed). The U.S. Congress also established the Securities and Exchange Commission in 1934 to police the securities industry.

But government responses aimed at curtailing stock fraud and other corporate frauds were not very successful, and stock fraud continued through the 1940s, as the American government devoted most of its resources to fighting the war in Europe. In his work on "American History 102: Civil War to the Present" Schultz (2004) noted that in 1940, the United States government spent 9 billion dollars in connection with the Second World War. In 1945 alone, the US government spent 98 billion dollars and diverted resources from other sectors of the economy in dealing with the war in Europe.

Because the Securities and Exchange Commission which was established to police the securities industry was riddled with inefficiency, coupled with the high cost of regulation, the agency soon fell under the control of the very industry it was supposed to watch, and financial frauds continued into the 1950s.

In 1950, Walter F. Tellier, an investment dealer-broker carried out a series of penny-stock schemes. In a five-year period between 1950 and 1955, Tellier and Company illegally earned more than $5 million from stock-related frauds. In 1956 alone, boiler room swindles cost investors more than $100 million as millions of worthless securities were dumped on investors (Wall Street Journal 1977).

In the early 1960s, American investors lost over $40 million to offshore bank schemes. Some of the frauds involved the Bank of Sark, a bank that was located on an (offshore) English Island, from which it took its name. In November 1963, Texas Gulf Sulphur Company engineers were charged by the Securities and Exchange Commission for trading on insider information (Hill and Knowlton 1972). But recorded cases of stock fraud increased significantly after the abolition of the fixed commission system on April 30, 1975. In 1977, (based on far from intensely researched evidence, since the quality of the underlying analysis is unknown) a United States Chamber of Commerce Study placed the cost of white-collar crime nation-wide at over forty billion dollars.

In August 1977, a federal report noted that the Mayor of the City of New York, along with several government officials and major financial institutions had misled investors on the offer, sale and distribution of $4 billion of short-term New York City notes (Wall Street Journal 1977). In October of the same year, the Washington Post reported that frauds involving the U.S. government funded medical programs for the poor and elderly had reached over one billion dollars a year. The 1970s also witnessed one of the largest insurance frauds in American history. The company at the centre of the insurance schemes was Great Equity Funding Corporation (Dirks and Gross 1974).

During the 1980s and the 1990s, the Ivan Boesky stock swindle, The Michael Milken junk bond scams, the Bank of Credit and Commerce International saga, the Bear Stearns Company fraud case and other cases that will be analysed later rocked the financial world.

Though the actual transmission process is unknown, given such an environment and history of corruption in the corporate sector, it would be no surprise if these financial swindles attracted the attention of traditional Italian-American organised crime members and helped to prompt them to move in on the securities market.

This study has found that in most cases, organised crime entered the securities industry as a welcomed partner. In other cases, it extorted its way into the corporate world. Firms like Lincoln Securities and Russell securities soon fell under the complete control of the mob after their directors borrowed enormous sums from organised crime in the 1970s (Block 1977).

A history of fraud and corruption in corporate America is not the only reason that enticed organised crime into legitimate commerce. This was also prompted by several other factors, including prohibition. Prohibition provided organised crime with billions of dollars, which if invested in legitimate corporations, could generate more income and enhance their image. Investments in underground activities may generate wealth, but could not guarantee respectability. Without the latter, criminals are stuck in their risky world with its attendant legal and violence risks. The legitimate business sector offered organised crime new avenues for investments and new opportunities for power, wealth and respectability. The corporate sector also looked promising in providing a legitimate cover for illegal activities, while allowing organised crime to remain anonymous under the corporate veil.

Organised crime did not invent the wheel of securities fraud, nor did it introduce white-collar crime to the world of business. It found an atmosphere of corruption and laxity in an area where prosecution was rare and punishment not as severe as punishment for interpersonal or violent crimes. By providing a sanctuary for illegal gains while conferring respect at the same time, the legitimate business sector created opportunities that organised crime simply could not ignore.

Yet organised crime involvement did not begin with the corporate scandals of the 1980s. One of the earliest reports of the infiltration of the securities market by New York's Italian organised crime families came in 1959. Porter (1959:56) reported that "the gangsters of the underworld have moved into Wall Street on a scale never before known. Mobsters with links traced to the dreaded Italian Mafia, the Lindbergh

kidnapping, the notorious gangland convention at Appalachian, NY in 1957 have been discovered in firms selling securities to the public in the past 18 months."
In the same year, the New York State Attorney General Louis J. Lefkowitz, warned that "never has the danger to the naïve little investor from the criminal element been as great as it is today" (Tyler 1962:18).

John Moscow of the New York County District Attorney's Office stated in interviews with me that during the 1960s, the activities of Italian-American organised crime were limited only to certain small over-the-counter securities that were traded on the NASDAQ, and which were not listed on an organised exchange. Forty-five years later, New York's Italian-American organised crime families have expanded their activities beyond small over-the-counter trade and are now active in the bear and bull markets as beneficial owners. (See glossary of terms-Appendix 25- for an explanation of key terms).

SECURITIES FRAUD AS AN EMERGING TREND

Organised crime controls some of the stocks on Wall Street by selling shop-stocks aggressively to investors and then unloading the stocks at inflated prices. Some of the securities that are the subject of hot initial public offerings (IPO) issued by cash-strapped firms have created breeding grounds for organised crime's influence within the financial industry. They maintain their control through bribery, violence, and intimidation. Some of the firms are controlled through hidden-ownership, which is the acquisition of brokerage firms by organised crime through front men and professionals who in some cases have no criminal records. Intelligence sources suggest that the Italian-American organised crime families presently (2005) own (through front men) over two dozen brokerage firms that are members of the NASD, with unrestricted access to NASDAQ; the NASD automated quotation system, which displays bid and asked prices for the more than 4,000 companies which make up the national market system. (These are cases under investigation, and are not closed down early because sufficient evidence needs to be collected to jail and incapacitate the organised criminals.)

Stock fraud represents one of the most complex forms of white-collar crime. Robb (1992:80) suggested that "The proliferation of shares, bonds, and securities of all kinds during the nineteenth century radically changed the nature of investment. Property as an essentially physical possession-land, plate, jewellery- gave way to the more intangible resources of income and interest from capital investment." Thus stock trading, which began as a simple concept for raising money to finance wars and settle government debts in the late eighteenth century, has now become a settled part of the global economy.

The highly specialized nature of financial transactions, the vague and poorly defined laws and regulations, coupled with the immense paper trail associated with securities trading make detection of illegalities difficult. And even when securities scammers working in legitimate firms are caught, some people do not necessarily view them in the same light as violent criminals. Instead, they are seen as business entrepreneurs whose incompetence, excessive risk-taking and irresponsibility do not sit well with the efficient operation of the stock market (Altman 2002a; Barak 2001; Barboza and Schwartz 2002; Callahan 2002; Friedrichs 2004; Greider 2002; Lewis 2002; Baer and Mills 1986; Braithwaite 1985; Block 1984 and Barnett 1981).

However, there might be differences in public opinion between sub-types dependent on whether the scams are pure rip-offs without legitimate activity, or more shaded conduct. All of these factors have collectively created enormous opportunities for fraud on Wall Street that organised crime simply could not resist. This is an illustration of the proposition that "organised crime is not a monolithic force marching to take control of society, but a multifaceted organising force continually testing the membrane of the legitimate market for permeable spots" (Van Duyne 1996:65).

One might expect that securities fraud is also attractive to organised crime because some judges and regulators hold the belief that the majority of stock fraud cases do not originate from a criminal intent. This enforcement philosophy- as well as pragmatic factors of scarce resources- may help explain why 80% of stock fraud cases are handled civilly through administrative proceedings. Interviews with organised crime figures suggest that organised crime moved in on this area of criminality because in the absence of a specific complaint and with the ever-present risk that dishonest brokers will destroy the files, the victims are often unidentifiable to outsiders. And even when they can be identified, most victims of securities fraud generally suffer only minimal losses, although the gains to the fraudsters could be enormous.

Moreover, securities fraud takes place under the cover of normal occupational routines (Shapiro 1990), making it more difficult for victims to know when they are being defrauded. The fact that this form of crime leaves little or no evidence of its commission makes detection and prosecution difficult. Discovery of stock schemes can sometimes be unfruitful to prosecutors because victims are generally reluctant to testify in court for various reasons, including self-incrimination, if they were a party to the scheme, such as stock schemes involving tax evasion, where the source of the funds or the scheme itself could be illegal.

Wall Street is also attractive to traditional organised crime because the amount of money needed to start a boiler-room operation is relatively small, since trading in phony stocks and stolen securities does not require the filing of a registration statement. Like most boiler-room schemes, it can be operated from a basement room anywhere in the country or, indeed, the world.

The potential reward that the stock market presents is simply irresistible to fraudsters. The invisible and non-personal nature of stock trading and the ease with which access can be gained through their financial advisers, brokers, and social contacts enabled organised crime to seek out new markets and newer ways and means to make money.

BACKGROUND INFORMATION ON SECURITIES FRAUD

Section 2 (1) of the Securities Act of 1933 defines a security as " any note, stock, treasury bill, bond, debenture, and evidence of indebtedness, certificate of interest or instrument known as security." The United States Supreme Court in SEC v. Howey (1946) defined a security as being "any investment of money in a common enterprise, with the expectation of receiving profits solely from the efforts of the promoter or a third party." The Supreme Court's definition encompasses every type of investment of money where the investor does not contribute his labour, but relies totally on the expertise of the broker-dealer who conducts financial transactions and makes investment decisions on behalf of the investor.

The passage of Organised Crime Control Act in 1970 and the Rico Statute were followed with an intense effort by law enforcement agencies to combat traditional organised crime activities. It is uncertain if these enforcement efforts may have led organised crime families in New York to seek new opportunities in the securities market. What is certain is that Wall Street looked very enticing and less risky, since conviction for securities fraud does not attract the same severe penalties, as does inter-personal crimes (Weisburd, Waring and Chayet 2001; Smith 1999; Kornbuth 1992).

This ambivalent reaction to securities fraud is well reflected in its treatment by the mass media, often accused of perpetuating the conventional social construction of crime by neglecting this form of white-collar crime and focusing on the more sensational activities of primarily lower class criminals. Such ideological one-sidedness has meant that the majority of people are continually exposed to a portion of crime in which the background consists of murder, rape, robbery, and theft and the foreground is full of characters mainly drawn from poor, and disorganised lower class neighbourhoods.

But various commentators (Box 1983; Jacobs 1994; Kwitny 1979; Levi 1995; Ruggiero 1996; Shapiro 1980) have recognized the detrimental and crippling effect that securities fraud and other forms of white-collar crime such as money laundering, and insurance scams, could have on a nation's economy.

In June 1971, the Permanent Subcommittee on Investigations of the Committee on Government Operations of the United States Senate began public hearings on "the scope of securities fraud." The hearings covered such areas as theft, counterfeiting, movement, use and manipulation of government and commercial securities here at home and in foreign countries as well. Special attention was given to the role of organised crime in all aspects of securities frauds, and the adverse effect their activities have had on financial institutions.

Stocks and junk bonds are the mainstay in large fencing operations. These financial instruments are sometimes moved to a country where banking and secrecy regulations protect transactions from surveillance (Levi 1995; Ruggiero 1996). The sale of securities is regulated, under both federal and state law. The United States Securities and Exchange Commission (SEC) has the power to license and regulate businesses and persons doing business in the underwriting of securities, as do the various states of the union, including the State of New York. The powers of the SEC are delegated in substantial part to the National Association of Securities Dealers (NASD) that grants licenses to salespersons called registered representatives and to supervisors called principals. For a registered representative at a broker-dealer to sell securities, the firm must be licensed by the SEC and NASD and the representative must be registered with NASD (Securities Act of 1933). The Blue Sky law, which has been enacted in almost every state, also requires that brokers and dealers in securities be licensed by the state in which the sale is made, though there is nothing to stop brokers from physically doing this unlicensed if they are prepared to take the risk.

The laws, rules, and regulations governing the sale of securities require that full and accurate disclosure be made to investors of all material facts regarding the securities sought to be traded. The 1933 Act also requires that a broker-dealer prepare and submit reports monthly, quarterly, and annually to the regulators, among others, reflecting whether the firm is in compliance. Firms not in compliance may not continue in business, except for limited transactions.

The principals of a firm are responsible to regulators for the conduct of the firm, and each brokerage firm has a compliance department which is charged with investigating complaints of misconduct within the firm. Persons who seek to sell securities are required to familiarize themselves with the laws, rules, and regulations governing the industry, and to take and pass examinations demonstrating their familiarity with them. Both the 1933 and the 1934 Securities Acts have a registration requirement, which applies to all domestic and foreign securities being offered to the public for sale. Failure to abide by these requirements can result in prosecution either as criminal litigation under section 24, or it may be handled as a civil proceeding under section 22 of the Securities Act of 1933. However, an offering of securities that does not exceed $500,000.00 was exempted from registration under Regulation A of the 1933 Act. The objective for the exception is to make it easier for small firms to sell their stocks to the public, and to avoid the burden of a deluge of red tape.

The loopholes in securities regulation appear to have held out some promising opportunities for organised crime within the financial industry. The Italian-American crime families in New York have exploited the loopholes, and circumvented most of these regulations, by committing various trading scams to generate wealth on Wall Street. Some of the trading schemes used by organised crime in New York's financial district, which I have identified during the course of this research, in addition to the schemes that I mentioned earlier are churning, cold-calling, boiler-room operations, Ponzi schemes, stock manipulation, and trading on insider information. Churning involves short time trading swings by organised crime controlled brokers who use the discretionary powers given to them by investors to conduct illegal trades. Investors, relying on their broker's judgement or advice will actively participate in this scheme without fully realizing the ultimate effect. By the time the investors become aware of the scheme, they may have already lost large sums of money.

Trading on insider information involves the use of non-public information by insiders for personal gain, to the disadvantage of other investors. Company executives and employees, because of access to confidential information may either buy or sell their own stock on the strength of secret, non-public company information on pending mergers or acquisitions. The outcome of most of these cases is serious financial loss to the public. The frauds committed by Napolitano, a reputed member of one of New York's organised crime families, which later will be discussed in detail, were carried out solely on the basis of tips supplied by Smith Barney and Morgan Stanley employees.

Manipulation of stock occurs when a broker who has vested interest in a stock makes false or misleading statements to his clients or members of the general public with the objective of creating an artificial demand for the stock. The false information may be transmitted in the form of a press release, or via direct mailing to prospective clients. The case of Wakefield Financial, G. K. Scott, and Kelly Trading, all of which were brokerage firms owned and controlled by organised crime involve the use of manipulation schemes.

Boiler-room operations occur when a number of manipulators through aggressive "cold calling" and misleading information induce members of the public to invest in unknown companies with worthless stocks, promising great returns. Once the victims purchase the stocks, the manipulators unload the stock, leaving the investors with nothing more than worthless pieces of paper. The indictment by the Kings County District Attorney of Peter Bistrian and Gerald Kuhr, both of whom are organised crime associates, epitomizes the use of boiler-room operation as one method for committing securities fraud. All of these fraudulent practices and pyramid schemes used by organised crime to make money on Wall Street will be revisited in later chapters

DEFINING "ORGANISED CRIME"

A generally accepted definition of the phenomenon that criminologists and the law enforcement community refer to as "organised crime" has not yet emerged. The federal Organised Crime Control Act of 1970 failed to offer a definition of organised crime. Sixteen years later, the President's Commission on Organised Crime (1986) maintained unsurprisingly that the problem of defining organised crime stems from the word "organized" and not from the word "crime": but this took us little further.

Numerous attempts have been made to define organised crime, but none has succeeded in providing a specific, or an explicit and unambiguous meaning of organised crime. In 1967, the President's Commission on Law Enforcement and Administration of Justice tried to define organised crime as a "Society that seeks to operate outside the control of the American people and their governments. It involves thousands of criminals, working within the structures as complex as those of any large corporation, subject to laws rigidly enforced than those of any legitimate governments. Its actions are not impulsive, but rather the result of intricate conspiracies, that are carried on over a period of time and aimed at gaining control over whole fields of activity in order to amass huge profits."

The Omnibus Crime Control Act of 1968, which was amended by Title IX of the Organised Crime Control Act of 1970 (RICO), defined organised crime as the "unlawful activities of members of highly organised, disciplined association engaged in supplying illegal goods and services, including but not limited to gambling, prostitution, loan sharking, narcotics, labour racketeering, and other unlawful activities of such associations"(Calder 2000; Mann 1980).

The inadequacy of the federal definition led the states to craft their own definition of organised crime in statutes that are binding only within their jurisdictions. Among these definitions, the ones that are noteworthy for our purposes are those of the States of California, Ohio and New York.

The State of California defines organised crime as any activity involving "two or more persons who with continuity of purpose, engage in supply of illegal goods and services, racketeering, theft, fencing and terrorism."

1. The State of Ohio defines organised crime as "any combination or conspiracy to engage in criminal activity as a significant source of income or livelihood, or to violate or aid, abet, facilitate, conceal, or dispose of the proceeds of the violation of criminal laws relating to prostitution, gambling, counterfeiting, obscenity, extortion, loan sharking, drug abuse or illegal drug-distribution, or corruption of law enforcement officers or other public officers, official or employees" (National Commission, 1976).

2. The State of New York defines organised crime as "The product of self-perpetuating criminal conspiracy to wring exorbitant profits from our society by any means-fair and foul, legal and illegal. It survives on fear, and corruption. It is a totalitarian

organisation. It imposes rigid discipline on underlings who do the dirty work, while the top men are generally insulated from the criminal act." These series of moral statements, which are offered as a definition of organised crime in the New York State Penal Law came out of several conferences that were sponsored by then Governor Nelson Rockefeller in the early 1960s. Those conferences later came to be known as the Oyster Bay Conferences, because the meetings were held in Oyster Bay, New York (Bequai 1979).

3. Securities fraud is prosecuted as "enterprise corruption" under Title X, Article 460 of the New York State Organised Crime Control Act of 1996. The Act defines an enterprise as "any entity of one or more persons, corporate or otherwise, public or private, engaged in business, commercial, professional, industrial, eleemosynary, social, political or governmental activity." The 1996 Act defines a criminal enterprise as "a group of persons sharing a common purpose of engaging in criminal conduct, associated in an ascertainable structure and criminal purpose beyond the scope of individual criminal incidents." A more thorough examination of federal and state organised crime control legislation will be carried out in chapter four.

Maltz (1976:30) rejected these sorts of definitions as inappropriate because they define organised crime "not in terms of unlawful activities," but in terms of "who is committing those unlawful activities." In this earlier work, Maltz (1976:30) offered his own definition of organised crime as a "crime in which there is more than one offender, and the offenders are and intend to remain associated with one another for the purpose of committing crimes. The means of executing the crime include violence, theft, corruption, economic power, and deception. The objective of most organised crime is power, either political or economic. These are not exclusive categories".

Following criticisms of Maltz's (1976) definition, he revised it as "the criminal and other unlawful activities of large, continuing, multi-enterprise organisations that were established primarily for criminal purposes, and use corruption and violence in their activities" (Maltz 1990:50).

Rush (1994:1) defined organised crime as "a complex pattern of activity that includes the commission of statutorily defined offences, in particular, the provision of illegal goods and services, but also carefully planned and coordinated instances of offences by fraud, theft, and extortion groups, which are uniquely characterized by the planned use of both legitimate and criminal professional expertise, and the use, for the criminal purposes or organisational features, of legitimate business, including availability of large capital resources, disciplined management, division of labour, and focus upon maximum profit, also, the persons engaged in such a pattern of activity."

Cressey (1969:18) defined organised crime as "any crime committed by a person occupying in an established division of labour, a position designed for the commission of crime, providing that division of labour also includes at least one position for a corrupter, one position for a corrupted, and one position for an enforcer." Cressey's definition appears to be more concerned with the criminal groups and the relationship among these groups than with the criminal activities themselves. The current view among many criminologists today is that organised crime can best be defined by focusing on the characteristics of organised criminal groups. Maltz (1985) identified these characteristics as corruption, violence, sophistication, continuity, structure, discipline, multiple enterprises, and bonding coupled with some legitimate businesses.

Hagan (1983) observed that non-ideology, hierarchy, continuity, force, restricted membership, illegal enterprises, illegal goods and services, corruption, monopoly, job specialization, code of secrecy and extensive planning are features which when examined together offer the best definition for organised crime.

A consensus definition that will precisely delineate the concept that criminologists, the news media, and public officials refer to as organised crime continues to be elusive. Part of the difficulty in reaching a categorical and generally acceptable definition results from the different opinions among government officials and scholars on what activities should be included in the organised crime category. Critics of the Racketeer Influenced and Corrupt Organization Act (RICO) have argued that the act is too broad, because it potentially applies to all commercial transactions. Opponents of RICO also claim that the inclusion of mail and wire fraud as predicate acts unjustly subjects both legitimate and illegitimate businesses to liability under the Act (Goldsmith and Linderman 1990). Inter-agency conflicts at the federal level, competition between bureaucracies and differences in organised crime laws in states throughout the country also complicate the definition process (Calder 1992). As the Department of Justice was using the Rico Statute to diminish the influence of organised crime through prosecutions and asset forfeiture proceedings, some members of Congress introduced two pieces of legislative amendments (HR 2517 and HR 2943) to change the law's definitional provisions. Navasky (1971) observed that one of Robert Kennedy's goals, as head of the Justice Department from 1961-1964, was to severely weaken the influence of organised crime. In 1978, a file clerk for the Federal Bureau of Investigation (FBI) and his wife were indicted by a federal grand jury on charges of selling confidential justice department documents to organised crime figures (Washington Post 1978).

In the 1980s, the so-called "Pizza Connection" trial pitted the federal government against 22 Mafia defendants accused of a $1.65 billion heroin smuggling and money laundering conspiracy that extended from Italy and Brazil to Brooklyn, New York and to a chain of pizzerias in the Mid-Western parts of the United States. Despite these revelations, Edgar J. Hoover, the former FBI Director repeatedly denied the existence of the Mafia in the United States during his tenure at that agency. Yet congressional hearings chaired by Senators Estes Kefauver of Tennessee in 1951, and John McClellan of Arkansas in 1963, founded evidence of its presence in the very denials and secrecy surrounding the testimony (Ryan 1995). Contradictory views among government officials on what precisely constitute organised crime have made it difficult to reach an adequate definition for the phenomena. Levi and Maguire (2004) argued that "organised crime is a notoriously difficult concept to define and to measure, and relative to the confident claims that are made about it , little is known about "its" operation in practice in many European (and for that matter) non-European countries." Hickey (1976) and Haskell and Yablonsky (1978) noted that the changing mores and norms of our society and the changing public attitudes toward criminality and the social reality of crime also create the problem of defining organised crime. Ruggiero (2000:11) sees little difference between traditional organised crime schemes and scams by legitimate corporate entities with "new ambits of investment which are increasingly bereft of rules, thus favouring the proliferation of new forms of crime of the powerful." But regardless of how it is defined, it should be noted that organised crime could not be understood by looking solely at traditional organised crime activities. Ruggiero (2000:43) argues that "illicit economies mirror characteristics of the legal economy." He locates "these economies in a contemporary urban bazaar, a site of electrifying movement, diversity, and exhilarating temporariness. Those who inhabit the bazaar undertake unstable careers and commute from illegality to legality and back again, with both spheres contributing income and shaping life-styles" (Ruggiero 2000:43). The question for this thesis is to what extent it is reasonable to conduct this inquiry through the lens of traditionally defined organised crime actors since there are some similarities between the aspirations of organised crime groups operating within the financial sector and the economic motivations driving legitimate investment firms on Wall Street. The argument here is that though it may be reasonable to extend it further- indeed, to include corporations often viewed as respectable- it is also reasonable to frame a definition of organised crime by looking at the way that Mafia-type groups have sought to spread their risks and profit-generating activities on Wall Street.

THE HISTORY OF ORGANISED CRIME IN THE UNITED STATES

The history of the phenomena of organised crime is but a part of the social history of the United States. The patterns of immigration, the rise of a middle-class, the organisation of policing and politics, and the expansion of financial institutions are the "mix and mingle" within which organised crime "emerge and operate" (Kelly et al, 1994:80). The earliest organised urban criminals made their home in the slum districts of New York City. For the most part, they were made up of Irish immigrants (Browning and Gerassi 1980). The "Forty Thieves, which is considered the first New

York gang with an acknowledged leader, were muggers, thieves, and pick-pockets on the lower east side of Manhattan from the 1820s to just before the civil war" (Siegel 1986). The Italian-American Mafia that was not far behind the Irish and Jewish gangs has its roots in Sicily (Bequai 1979).

Between 1820 and 1930, an estimated 4.7 million Italians immigrated to the United States. This was the largest and longest European exodus in modern history. Driven by the hope of employment and a quest for a better life, many of these Italians began migrating to Chicago during the 1850s. The first Italian immigrants came mainly from the more advanced regions of the north, where they had gained employment as merchants, shopkeepers, and businessmen. In the 1890s, during the civil war in Europe, emigration began to shift to Southern Italy, "The Mezzogiorno" region, where living conditions were among the worst of all of Italy (Kelly et al.; 1994). Along with this latter group, who were mostly from Sicily, came the criminal gangs that laid the foundations for what came to be viewed as "organised crime" in the US (Maas 1969). These criminal gangs later became known as the Mafia (Abadinsky 1985; Albini 1971; Block 1985; Cressey 1969; Ianni 1972; Pillegi 1985; and Rowan 1986) or la Cosa Nostra (Albanese 1982; Cressey 1967; and Maas 1969).

In New York, the growing problem of gang warfare had already drawn public attention by the end of the nineteenth century. The 1920s were one of the most turbulent periods for organised crime. With the passage of the Volstead Act in 1920, the basis for a new criminal society was born. Before 1920, America's underworld consisted of fragmented groups of warring gangs, who were divided by ethnic hatred and rivalries over territories. The Italian-American gangsters were still subservient to the Irish and Jewish gangs in 1920. A year earlier, Al Capone, who later became head of the Mafia in the United States, had allied himself with Johnny Torrio, former head of New York's "Five Point Gang" in Chicago. Their goal was to counter the growing influence of the "Blank Hand", a powerful gang that was then controlled by Sunny Jim Colosimo in Chicago. In New York, the Sicilian community founded the "Unione Siciliana", and branches were soon established in a number of other cities, including Chicago. The gang wars that would soon erupt between the Black Hand and Union Siciliana shaped the landscape of organised crime in this country.

But the turning point in the history of organised crime in the United States came with the passage of the Volstead Act, which placed a ban on the sale of alcohol on January 16th 1920. During the era of prohibition, law enforcement efforts designed to curb illegality consequently placed value on criminal activities and led organised crime to a new level of wealth, and power, which they continued to enjoy through that era (Abadinsky 1985; Behr 1997). Prohibition also altered the relationship between political machines, vice syndicates, and criminal gangs (Jacobs 1994; Behr 1997).

This change, however, was not the one foreseen by social reformers. Abadinsky (1985) states that before prohibition, the local political boss acted as a patron for vice entrepreneurs and gang members who in-turn assisted him with financial and voting support. But because of the huge sums of money involved in bootlegging, local vice syndicates and criminal gangs quickly moved into the liquor trade. Struggles to control liquor distribution territories and protection from rival organisation suddenly became more important than protection from the local police.

Thus, prohibition acted as a catalyst of opportunity that caused organised crime to blossom into a powerful force in American society. Some common crooks turned into sophisticated gangsters who worked to provide an otherwise law-abiding American public with alcohol. Haller (1971) states that gangsters were even admired by some ethnic groups and working class Americans because of the diverse ways in which their activities influenced local communities. They provided jobs, supported local charities, and helped mediate labour disputes. They were also seen as persons who fought for their own ethnic group by aiding local politicians in the rough and often violent politics of the slum.

Prohibition also forced cooperation among criminal gangs nationwide in an effort to ensure the uninterrupted flow of alcohol. Soon, the liquor business became international in scope as illegal alcohol was often smuggled into the United States and shipped to various parts of the country. All of these activities demanded the cooperation of criminal groups from around the nation. This cooperation, though largely limited to the period of prohibition, was the foundation of the belief in the existence of a nationwide crime syndicate (Ianni and Reuss-Ianni 1972).

By 1927, the bloody war for Sicilian succession in Chicago took on national dimensions, as both Italian-origin and other ethnic gangs from around the country sent in their assassins to assist the warring factions of their backing. The Al Capone group won the war in Chicago, and by the end of 1927, organised crime was already at the centre stage of government policy. In January 1928, Herbert Hoover, the newly elected President of the United States instructed his Secretary of the Treasury, Andrew Mellon, to find a way to imprison Al Capone (Bequai 1979).

As government forces were finding ways to address the problem of organised crime, the inter-criminal factionalism that had long prevented a unified approach to criminality on a national scale was beginning to come to an end in 1929. Then suddenly, a conflict broke out between Joseph Masseria and Salvatore Maranzano, who were the two major powers in New York City's Italian-American organised crime.

The Masseria-Maranzano conflict, which was later called the "Castellamare war", began at the end of 1929, and did not end until the death of Masseria in 1931. In Masseria's camp during the conflict were Al Capone, Lucky Luciano, Vito Genovese, Carlo Gambino, Albert Anastasia and Frank Costello. In Maranzano's ranks were Joe Bonanno, Tommy Luchese, Joseph Profaci, Joseph Magliocco, Peter Maggaddino and Stefano Maggadino, who eventually became the head of Mafia operations in Buffalo, New York. He later expanded his operations into the State of Ohio and Canada. Joseph Valachi, one of the most prominent organised crime defectors, would later credit Maranzano during a congressional hearing in 1963, with establishing the modern La Cosa Nostra.

Following Maranzano's victory over the Masseria camp on April 20th 1931, a new conflict erupted between Italian-American gangsters in New York and the Irish gangs headed by Dutch Schultz and Louis Buchalter. Maranzano also faced opposition from the Jewish gang, which was led by Meyer Lansky and Jake Shapiro. With the murder of Maranzano on September 11, 1931, the clannishness of the old syndicates began to give way to cooperation between the Italian and non-Italian organised crime. From that time, crime in America took on a different dimension. Jewish, Polish, Irish, Russian and Italian racketeers, joined by other ethnic groups formed a national crime commission in 1931, with Al Capone at the helm of the commission (Bequai 1979). After Al Capone was convicted for tax evasion on October 24, 1931, Lucky Luciano assumed the mantle of leadership for America's underground endeavours. As Luciano increased in power and fame, non-Italian gangsters began to decline. After the murder of Dutch Schultz and other prominent non-Italian gangsters in 1936, the Italian-American syndicates consolidated their grip on criminal enterprises in the United States. Successive wave of victories over rival gangs from other ethnic groups led the Italian-American crime families that emerged during the 1930s to become formalized.

When prohibition ended in 1933, the nation's criminals were deprived of a lucrative source of revenue. But the repeal of the Volstead Act did not mean the end of the newly expanded crime enterprises. Instead of disappearing, the gangsters simply sought new opportunities for illegal profit in gambling, loan sharking, book-making, labour racketeering, prostitution, pornography, narcotics distribution and other activities, which were still banned in most places (Abadinsky 1985). These activities brought the American gangsters, now dominated mostly by Italian-Americans into what Nelli (1976) described as the "Golden Age of Organised Crime."

In 1937, Lucky Luciano was given a thirty to fifty years sentence for promoting prostitution. In the same year, Vito Genovese fled the United States for Italy to avoid prosecution. With Luciano in prison, and Genovese in Italy, and the United States involved in World War II, the American syndicates made inroads into other economic sectors, including the entertainment industry, the labour unions, manufacturing sector, oil and gas industry, racing and sports industry and the financial markets. The World War II years also gave organised crime a needed break from the adverse publicity and prosecution of the 1930s. The nation's police agencies were so concerned with the threat of sabotage and internal subversion that efforts against organised crime took on secondary importance. Organised crime even assisted in guarding the nation's piers and factories from foreign sabotage (Bequai 1979).

The accounts on the history of organised crime in the United States outlined in Bequai (1979) have been challenged by several scholars, including Abadinsky (1985), Albanese (1985) and Block (1994) for omitting some important roles that organised crime played during the First and Second World War. According to Block and Chambliss (1981), organised crime was also instrumental in securing labour peace while the United States was at war in Europe. During the war years, organised crime invested in almost every sector of the economy, and employed hundred of thousands of people that would otherwise have been jobless. By the end of the 1940s, the gangs of the 1920s found respectability behind corporate veils and philanthropy (Bequai 1979). By the time the Second World War ended in 1945, a well-entrenched organised criminal structure had been firmly established in many American cities. In the international arena, they also helped to fight against Communism in Italy.
The post-war syndicates, with billions of dollars at their disposal, continued to play a significant role in politics at all levels throughout the country. Some public officials and political figures were not only the recipients of bribes, payoffs and political contributions, but were also direct participants in businesses controlled by organised crime.

Since the 1920s, references to organised crime meant mostly the Italian Mafia, but serious scholarship on this subject has shown that different ethnic groups which include the Russian mob (Williams 1997) and the Nigerian syndicates, whose criminal activities led to the creation of the joint NYPD/FBI West African Task force, Asian gangs (Kaplan and Dubro 1986), European syndicates (Carter 1992; Van Duyne 1993; Freemantle 1995; Levi 1993; Ruggiero 1996; and Tutt 1989) and their American and Australian counterparts were all involved in organised criminal activities. Thus "organised crime" came to be seen as almost any group other than home-bred Americans themselves.

Police records and empirical studies have also shown that the Chinese Triads, the Japanese Yakuza and the Jewish diamond fraudsters are also actively involved in organised criminality. All of these criminal groups were operating in various parts of the United States. So by the time the Kefauver Senate Committee to investigate the involvement of organised crime in Interstate Commerce was formed in 1951, organised crime had taken roots in many parts of the country. The Kefauver Senate Committee found or according to critics, created what was essentially a national criminal cartel with its own enforcement arm, "Murder Incorporated." After a year of congressional hearings, Americans were stunned to learn that organised crime was a part of their social history. Congressional hearings, Presidential Commissions, criminologists and law enforcement agencies have highlighted the importance of organised crime as a global policy issue, hence the focus of this study on the involvement of traditional organised crime in New York's financial district.

SUMMARY OF THE CHAPTERS

The Study is broken down into seven chapters. Following the introductory paragraphs, chapter one reviewed some of the literature on white-collar crimes and provided an overview of the history of financial fraud. The chapter also discussed securities fraud as an emerging trend and a new market for traditional organised crime and offered some background information on the enactment of the Securities and Exchange Acts of 1933 and 1934, as an attempt by the United States government to regulate the securities industry. Chapter one concluded with a definition of organised crime and the history of organised crime in the United States.

Chapter two is the methodology section of the dissertation. The empirical techniques that were applied in conducting the study are discussed in this chapter.

Chapter three offers a review of the some of the crime causation theories and criminological perspectives that will be used as the theoretical framework of this dissertation. Chapter four provides an in-depth analysis of the social organisation of securities fraud, the public and government attitude toward this form of white-collar crime, and the methods employed by organised crime groups in fleecing investors on Wall Street.

Chapter five presents conclusive evidence on the infiltration of organised crime groups into the securities market in New York with a fuller discussion on sensitive case studies and some of the key research data analysed throughout the work. The chapter concludes with a discussion on how the subjects of this research recruited members for securities schemes.

Chapter six illuminates on some of the pull factors that led organised crime to the securities market, the impediments to control of securities fraud, and offers some poignant recommendations for effective control of securities fraud.

Chapter seven, the final section, provides the reader with a summary of the research by linking the key findings of the study with the theoretical framework, hypothesis and research questions upon which this research was constructed.

CONCLUSION

Traditional organised crime groups are characterised by high density and a large proportion of familial or affective kinship relationships and this is primarily suited for schemes where a great deal of trust and secrecy is required. Organised crime involvement on Wall Street requires an operational departure from their core history and from their enduring way of conducting business to the formation of network relationships that are in direct contrast to the otherwise hierarchical structure for which traditional organised crime is known. Ethnic identification is one of the core requirements for membership in traditional organised crime families. But it is difficult to execute stock schemes without drawing on the skills of others whose ethnicity may be external to those of the organisers of the scam, especially if that ethnic group lacks the needed skills for the successful execution of stock schemes. This thesis argues that the need for expansion into the stock market compelled traditional organised crime families to form alliances with non-Italian-American fraudsters on Wall Street. Social networks based on mutual ethnic and affective relationships are more lasting and durable than are instrumental relationships with other ethnic groups for stock schemes. Bruinsma and Bernasco (2004:91) have already noted that collaboration among persons who participate in less cohesive networks such as we have in the stock market is less likely to be of longer duration, because networks that are looser often restrict their collaboration to just one or a few criminal projects. The connections between traditional organised crime groups and emerging networks are discussed in later chapters. The extent of these collaborations and the schemes that were carried out as a result of these alliances are discussed in chapter five.

In order to accomplish the goal of the study, numerous quantitative data and rich descriptive information were collected from the following sources:

- The New York Stock Exchange
- The U.S. Securities and Exchange Commission
- The United States Department of Justice
- The National Institute of Justice
- The Manhattan District Attorney's Office
- The New York State Commission on Organised Crime
- The Federal Bureau of Investigation
- The United States Treasury Department, Criminal Investigation Department
- United States Attorney's office: Eastern and Southern Districts of New York
- New York Police Department: Organised Crime Control Bureau
- Data available from the National Criminal Justice Reference Service

The above sources of data and other sources that became available during the period of this research were used. I began the process of collecting data for this project in 1998, shortly after I was admitted into the doctoral program. The majority of the raw data and sensitive information on organised crime members were obtained from the NYPD Organised Crime Control Bureau. Others were gathered from the enforcement agencies outlined above. The information and useful data gleaned from the above sources are discussed throughout the work. The different research methods, including ethnography, participant and field observations, collection of primary and secondary data and various interview techniques employed to draw valid empirical conclusions are examined in chapter two. Subsequent research effort to replicate the findings of this study should be able to access the same data that were utilised.

CHAPTER TWO

METHODOLOGY

INTRODUCTION

Chapter two is the methodology section of the dissertation, and it provides the reader with the different empirical techniques that were employed to advance some of the arguments in this thesis, as well as the sources of the data upon which this scholarly work is based.

Journalistic accounts of the penetration of the stock market by organised crime abound, but few empirical works exist on the extent of the infiltration and the effect that government agencies had on the entry of organised crime into legitimate commerce (Block 1991, 1986). Several works and studies on white-collar crime ignored the organised crime component altogether, as well as the relationship between organised crime and the role that the criminal justice agencies have played in stimulating the entry of organised crime into the financial sector.

Shapiro (1980) conducted an in-depth study on the securities market and analysed 581 cases of securities fraud in the United States. But her research focused on corporate wrong doing within the securities industry without any reference to the role of organised crime in financial frauds: nevertheless, it appears likely that if the files had suggested any "organised crime group" involvement, she would have drawn attention to this. The data stored by the SEC do not have a category for organised crime-related cases, and may perhaps explain why she did not discuss explicitly the organised crime factor in securities violations, though the issue presumably would have come up in her interviews with officials if any of them had been aware of this aspect. This is therefore the first empirical work on the relationship between the

American criminal justice system and the commission of securities fraud by organised crime (as conventionally defined) in New York.

Research into organised crime presents difficulties not typically encountered in the social sciences. Valid empirical research into organised crime is often hampered by the absence or unreliability of the data sources, as well as by disagreement on how (un)reliable those sources are. Another problem that social scientists may face in researching organised crime is that some of what has been published was written for public entertainment or as part of an attempt to gain more powers and /or resources. Journalists, law enforcement agents, and government officials have written numerous accounts about organised crime, but these materials are rarely constrained by the rules of careful empirical inquiry, as post-graduate research studies should be. Triangulation of sources to test for consistency is sometimes possible, but sometimes, it merely looks as if triangulation has occurred, since consciously or otherwise, all of the "data" come from the same source.

It is partly for this reason and partly because of the failure to set limits to the geographic scope of statements about organised crime that Albini (1971) lamented that the literature on organised crime contain so many contradictions that the reader will be reduced to a state of "almost complete confusion" when reading about this subject. His observation may not be entirely true today as it was 34 years ago. However, it should be conceded that organised crime is also not as easily researchable or open to validity testing as many other topics, although it is not alone in offering the researcher numerous obstacles. There are a number of methodological problems involved in researching this topic. Anderson (1979) noted that "participants don't want to talk about their activities or admit involvement." Information sources therefore must often be circumspect or indirect. Cressey (1967) maintained that the ongoing activities of organised criminals are simply not accessible to observation by the ordinary citizen or the ordinary social scientist. Even to gain access to the observations made by law enforcement and investigative bodies, one must have "connections."

But in spite of the difficulties that researchers encounter, organised crime studies have been successfully accomplished through interviews with law enforcement officials and criminal informants (Levi 1981; Albini 1971; Chambliss 1971,1978; Jacobs et al. 1994; Levi and Osofsky 1995; Albanese 1996; Van Duyne 1996; Block 1997; Van Duyne and Levi, 1997); case studies (Abadinsky 1981, 1994; Hobbs and Pearson 2003), the review of investigative reports, published works, and other documents (Cressey 1969; Anderson 1979; Atkinson 1990) and through direct observation (Ianni 1972, Naylor 1996, Levi 1998a, Gomez-Cespedes 1999, Hobbs 1988, Hobbs 1998, Hobbs and Pearson 2001). All of these methods were applied in this study, including direct observation at the New York Stock Exchange.

THE EARLY DAYS OF THIS PROJECT

The securities market in New York is a very complex sector consisting of over two thousand investment and brokerage firms with 1366 seats on the New York Stock Exchange alone. Since I was conducting research on the activities of organised crime within the securities industry without much knowledge of how the stock market normally functions, it became desirable and necessary to conduct fieldwork at an investment firm. In this way, I hoped to situate the study within the routines of "normal" legitimate practice.

The objectives for choosing to do an intensive ethnographic study at a securities firm were to gain an observer's view of how the stock market operates and how brokers conduct daily transactions, and to observe first hand how the loopholes in securities regulations might be manipulated by fraudulent brokers/dealers. It was also the aim of this researcher to probe the reasons why the securities market became enticing to organised crime. Field observation was also intended to overcome some of the obstacles to obtaining valid information when using surveys and questionnaires, especially in relatively closed areas like the financial market.

JUSTIFICATION

Securities fraud emerged as the focus of this study because of a confidential memo on securities fraud from the New York City Police Department's Intelligence Division, which implicated several people connected to organised crime in New York. (Though I am aware that it is culturally and analytically problematic, I shall use the term organised crime without inverted commas because this is how the phenomenon is still largely seen in law enforcement and media circles.) My interest in this topic grew out of the realization that at that time, 80 million Americans had their retirement funds and hard earned money in the stock market (New York Stock Exchange Fact Book 2000). If the integrity of the financial sector that has been entrusted with the investments of so many people is undermined by organised crime and by other fraudsters not necessarily connected to organised crime operating within the financial sector, the dreams and hopes of millions of people will be ruined. This work is primarily concerned with the activities of traditional organised crime groups within the financial sector because when I began this project in 1998, revelations about systemic fraud and mis-selling by major investment firms and multi-national corporations on Wall Street had not yet happened (or not yet been exposed). However even with the advantage of hindsight, this does not make the organised crime focus unimportant as a research topic: it merely emphasises the importance of situating it within broader framework of elite misconduct causes, opportunities and controls.

The stock market is the financial engine upon which our economy (outside as well as inside the financial services sector) depends. As a matter of fact, the economies of many nations around the globe are thriving on the strength of their securities markets. Did this power of the stock market as a means to produce capital catch the attention of organised crime figures? Was the desire to find legitimate investment in the securities market for organised crime capital dictated by the constraints imposed upon organised crime enterprises by the illicit markets? Does the interface with legitimate markets provide organised crime with means to launder profits from criminal activities (Levi 1994)? Does the corporate sector provide a source of legitimate and reportable income? Does it also provide means to conceal other illegal activities, while guaranteeing stable and safe investment opportunities? These questions are worth examining.

FRAMEWORK OF THE STUDY

This research design is primarily focused on the activities of organised crime within the securities market and the effect that the criminal justice system has had on organised crime. In order to accomplish the purposes of the study, it was important not to rely exclusively on one method of data collection. Selltiz, Wrightsman and Cook (1976) suggested that researchers should use as many methods as required to obtain accurate data. Some typical data collection methods that were used in this study include field observation, formal, informal, structured, semi-structured interviews, and review of records.

Regardless of which method or methods the researcher chooses, several steps must be taken to formulate the objectives of a research design. This means that the researcher has to define the questions that are to be answered (Selltiz, Wrightsman and Cook 1976).

Hobbs (1995) provides a collection of research studies on how a variety of sources, including ethnography, life histories, oral histories, biographies, autobiographies, and journalistic accounts, could be effectively used to profile the personal characteristics, criminal careers, crime typologies, and motivations of persons who rely upon crime as the primary source of their income.

As part of the Cardiff University papers in qualitative research, Brookman, Noaks and Wincup (1999) explored the application of qualitative research to a wide range of criminological topics. The authors suggested that ethnographers could use various approaches such as interviews, field observations, focus groups, documentary analysis, and oral histories in conducting qualitative research because the boundaries of criminal behaviour are socially constructed and are therefore shifting and fluid. With these guidelines in mind, I entered the research setting in an attempt to make some sense out of an ongoing process that cannot be predicted in advance (Hobbs 2001; Rawlinson 1998).

SITE OF THE PROJECT

New York was selected as the site of this study because it offered a variety of advantages (in addition to my working there). First, the state has the largest concentration of identified organised crime figures of any state in the United States. Secondly, at the time when I commenced my research, the state handled some $2.7 billion of money transfers a day, and seventy-five percent of all U.S. dollars moving around the world are routed through the State of New York (Gralla 2000). Thirdly, New York serves as the financial capital of the country with the largest stock exchange, the New York Stock Exchange (NYSE) located here.

The New York regional office of the Securities and Exchange Commission (SEC), a federal agency charged with regulating the securities industry and enforcement of securities legislation handles over fifty percent of all securities fraud cases nationwide.

Finally, the New York City Police Department, of which I am a part, has some of the most useful and most extensive data on organised crime of any other local, state and federal law enforcement agency in the country. The Federal Organised Crime Task Force, a multi-agency task force comprising of the NYPD, FBI, Treasury Department Agents, Alcohol, Tobacco and Firearms, and the Drug Enforcement Administration rely primarily on the data stored at the NYPD Organised Crime Investigation Division (OCID) for most of its investigations.

OVERCOMING INITIAL HURDLES

Law enforcement agencies are reluctant to provide researchers with access to organised crime data. This fact is well documented in academic literature. Reuter

(1986) states that this lack of cooperation is a rational choice made on the part of those agencies because they stand to gain little by allowing access to outside researchers who may raise questions about their operations. Fox and Lundman (1974) had already noted that "Gaining research access may be conceived as a phenomenon involving a passage through two gates. The first gate is manned by top-level administrators of the organization, while the second gate is controlled by the aggregate group of proposed subjects of one's study."

In conducting this study, I received (as far as I am aware) the full cooperation of prosecutors, law enforcement officers, court personnel, correction officials, and a number of other people who are knowledgeable about the focus of this study. I have worked with some of these persons during my twelve-year career as a member of the New York City Police Department. But the most useful contacts which later proved invaluable and a major source of the data that was gathered by this researcher came in 1998. In 1998, during my tenure in the Chief of Department's Office, my office was located on the thirteenth floor at One Police Plaza, directly across from the office of the Chief of the Organised Crime Control Bureau. It was in that year as I was contemplating this project that several contacts were made with investigators and officers knowledgeable about certain aspects of organised crime and the securities-fraud related activities of syndicated groups, as we met in the hallway during business hours. These contacts facilitated my access to some of the sensitive data on securities fraud that were perpetrated by organised crime figures in New York.

FIELDWORK AT A SECURITIES FIRM IN NEW YORK

It is important for researchers to be sensitive to the socio-economic, cultural and situational opportunity contexts in which criminal activity takes place. On November 4, 1999, upon my return to New York from Cardiff following sessions with Professor Michael Levi, my project supervisor, I contacted the Vice President of Investment at a securities firm on Wall Street. I had known her for over four years at that time, and we both attend services at the same church on Sundays. I informed her that I was conducting a study on the penetration of organised crime into securities markets, and would be interested in knowing more about the industry.

She indicated to me during our first meeting that her firm does not respond to surveys and questionnaires, and that financial records are only disclosed subsequent to a court order or subpoena from the Securities and Exchange Commission. I informed her that I was not particularly interested in the financial statements of their clients, but wanted to learn about how the stock market operates, how investment transactions are carried out, and how stock- brokers and dealers conduct daily transactions. She asked me to give her a few days to think about my request.

A week later, she got back to me and informed me that the staff at her office sign binders which prohibit them from disclosing any information about their conduct at the firm to anyone outside the firm, except when directed by law. I consented to abide by those same conditions and then asked her if I could work for the company for a few months as an intern without remuneration. She agreed, and on Tuesday, November 16, 1999, I began my "internship" at a firm which for the purposes of confidentiality would be called "XYZ Securities" then located around the Wall Street area in lower Manhattan, New York.

It should be noted that having been taken up by a sponsor, the researcher might find it difficult to achieve independence in locating the limits of research bounded by the social horizon of a sponsoring group or individual. Such social and personal commitments of the researcher may be exploited by gatekeepers as blocking tactics to close off certain avenues of inquiry. I found this observation to be of a valid concern during the period of my fieldwork at XYZ Securities. Even the most friendly and cooperative of sponsors could shape the conduct and development of research. To one degree or another, I was expected to conform to existing networks of friendship, territory and boundaries. Even the casual adventurer participates, if only momentarily, in the lives of the people he meets. Atkinson (1990) stated that field observation is not only about gaining access, but it also involves establishing rapport in a new environment.

On my first day at the firm, most of the staff welcomed me with open arms except two senior members of her staff, one of whom had direct supervision over their agents who trade on the floors of the New York Stock Exchange. I later learned that interns, mostly accounting students from colleges in North-Eastern States, are regular features in securities firms and that the senior investment officer who gave me a cold reception had been reprimanded three months earlier for failure to review the "sell-order" entries that an intern had made. It was not long when it became apparent that gaining entry to a setting does not guarantee access to all the data available or pertinent to the study.

Field observation was used at XYZ Securities because in my view, it is the most appropriate technique in securing data that can provide a reliable insight into the world of the securities market and the behaviour of securities traders. Ethnographic studies may vary in scope, focus, and methods of execution. They are characterized by the investigation of small, relatively homogeneous and geographically bounded sites (Heslin 1972); by long-term and repeated appearance of the researcher at the site (Wax 1980); by use of field observation, supplemented with a variety of auxiliary techniques (Hagan 1982); by creation of a data base consisting primarily of field notes (Bogdan and Biklen 1982) or by a preoccupation with the interpretive description and explanation of the culture, behaviour, and social structure of the group under investigation (Wolcott 1990).

Spradley (1979) contends that field observers serve to gain from people their definitions of reality and the organising constructs of their world. Because these are expressed in particular linguistic patterns, it is crucial that the social scientist be familiar with the language variations used by participants. As a law enforcement officer with very little knowledge about the securities market, I had to become familiar with the industry and securities terminology as used on a daily basis by investment professionals.

Prior to the research, I considered various interview forms that would be most effective for this kind of study. Denzin (1970) differentiates three forms of interviews: the scheduled standardized interview, the non-scheduled standardized and the non-standardized interview. The scheduled standardized interview is an orally administered questionnaire, which poses the same questions to all the respondents in the same order. Standardized interviews are useful in situations where administration must remain constant to all respondents and where results must be readily enumerated. In non-standardized interviews, the respondents are asked the same questions but the order in which they are posed may be altered based on the respondent's response and reaction.

Spradley (1979) observed that ethnographic interviews share many features with friendly conversations, and that skilled researchers often gather most of their data through field observation and many casual, friendly conversations. Although all three forms of interview techniques recommended by Denzin (1970) were used in this study, during the nine months that I spent at XYZ Securities, the interviews were unstructured and open-ended since it was not disclosed to the staff that I was conducting research on securities fraud. That would not only have jeopardized the job of the Vice President through whom I gained access to the firm, but would have put numerous stumbling blocks in my path as well. This Strategy was ethically justified (from a research rather than police perspective) because my goal was not to expose wrongdoing but to understand the socio-economic world of securities market participants (albeit not in an elite Wall Street firm).

Several stock- brokers and securities dealers were interviewed, and these interviews were designed with the aim of securing data on how day-to-day transactions in securities are executed and how the firm's fraud detection and prevention measures can be evaluated.

A detailed research diary was kept during the period of study to log ideas and data collected from field observations. Some of the data collected and ideas gathered during the field work at the securities firm are discussed in appendices 1-23.

My observations at a securities firm sensitised me to the daily operations at the firm. Most of the employees at the office were helpful, and some even asked me on several occasions to assist them with their work. Many of them were intrigued by my interest in the most basic aspects and minor details of their work. But as an intern, I was not given access to either the meetings, or some documents and certain miscellaneous information that were readily available to the firm's employees. However, the Vice President of Investment on many occasions gave me memos and minutes of meetings to type. Whatever data I gleaned from those closed door executive sessions came from the manuscripts and the memos I was asked to type. My weekly "hanging out" at the firm took me through all the various divisions including the compliance unit, during which time I engaged in informal interviews and conversations with the company staff in various positions.

Five weeks into my observations at the firm, I attended the Wade Cook Investors Seminar and enrolled for the stock- brokers' training course. About fifty investors were present at the seminar. These investors were one of the most common sources of information on securities fraud, since some have been victims of fraud themselves.

The very nature of securities transactions makes fraud detection difficult. Many aspects of the securities market are invisible and closed to observations. Most transactions are executed following telephone conversations or written correspondence to which I did not have access. But some of these impediments were mitigated by examining the purchase and sell orders, and by further observations on the floor of the New York Stock Exchange.

The fieldwork combined interviews and observations for about thirty hours a week, during a period of nine months in an effort to explore and uncover the mysteries surrounding securities fraud.

It should be noted that opportunities for fieldwork using observation techniques could have some limitations as a source of information on the operations of organised crime on Wall Street, since some fraudsters associated with organised crime are not labelled as such in the organised crime database maintained at the NYPD Organised Crime Investigative Division.

Blumer (1939) had already drawn my attention to some important methodological issues involved in working with qualitative data. Blumer's work is relevant not only because it offers a set of clear guidelines and cautions to researchers, but also more importantly because it enabled me to be mindful of some serious empirical questions as I was conducting this study. What was the purpose of the research? How successfully was it achieved? How were data and methods employed? What generalisations were reached? Are they sound deductions from the data? Are official documents fragmentary, discontinuous, and incomplete? Are the data extensive enough and sufficiently continuous to cover adequately various elements of the phenomenon about which my research questions were constructed? Are the data broad enough and representative enough to meet the adequacy criteria? Are the data so flexible that they can readily lend themselves to diverse and even contradictory theoretical uses and interpretations? Is the study valid? In other words, to what extent did the research design measures what it was intended to measure (Ary, Jacobs and Razaveh 1985)? Is the study reliable? What is the consistency level of instrument measurements over time (Parasuraman 1986)? A research design must attempt to meet all of these criteria, besides providing the means of gathering data on the appropriate variables that cannot be found through secondary sources.

In order to meet those rigorous reliability and validity criteria associated with empirical studies, data were also derived from agencies charged with the enforcement of securities regulations and prosecution of offenders. The research questions were designed to develop information on the activities of organised crime in New York's financial district and to examine the impact of the criminal justice system on the syndicates' entry into legitimate commerce. The case files of several organised crime figures were reviewed. These case files shed some light on the entrance and participation of organised crime in the securities market.

My role as a police officer also afforded opportunities for participant observation unlikely to be granted to an outsider. On three different occasions, I executed warrants at four locations with members of the Organised Crime Investigation Division. Two of the cases produced detailed information on the modus operandi of organised crime in New York's financial district.

Interview data were analysed using the Constant Comparative Method advocated by Glaser and Strauss (1967). In this approach, data are coded into as many categories as possible. Coded responses for each category are then compared with previous incidents in the same groups as well as in different groups. As the coding continues, the unit of comparison changes from comparison of incident with incident, to comparison of incidents with properties of the category that resulted from the initial comparisons of incidents. Theory thus develops as different categories and their properties tend to become integrated through constant comparisons that force the analyst to make some related theoretical sense of each comparison.

Data were also gathered on the bureaucratic methods used in the compilation and organisation of information, and interagency patterns of communication and information exchange. Qualitative and quantitative methods of data analysis were also used. Qualitative interviews and observation allow one to learn the meaning of an observation, present data and explain something that is occurring. Quantitative data, which include frequency distributions and correlation, enable the researcher to discover and represent the extent to which something is occurring (Van Maanen 1982).

Field observation was conducted to document and corroborate information received from other sources. Through field observation and interviews, I attempted to discover the conventions, protocols and standards that need to be appreciated before a coherent set of ideas about securities fraud can be formulated. Thus the measures used in this study include both official data and self reported data. It is therefore both a descriptive and an exploratory investigation. Unfortunately, SEC data did not identify offenders that were affiliated with organised crime. I had to manually check in our department's system for securities offenders whose names were in the NYPD's organised Crime Control Bureau databases. This might have been a good precaution in any event, since connection with organised crime is unlikely to have been central to the SEC's interests and therefore the dataset quality would have been affected negatively.

WHY ETHNOGRAPHY?

Ethnography is a term used to cover a wide array of very different research methods. It involves extensive fieldwork that includes field observation as well as formal and informal interviews, document gathering and recording of data (Van Maanen 1982).

The ethnographic tradition allows the researcher to directly participate in the cultural setting of actors and enables the social scientist to see the "operating situation as the actor sees it" (Blumer 1939:56). Spradley (1979) observed that "ethnography means learning from people rather than studying them." Johnson, Natarajan, and Sanabria (1993:9) observed that qualitative methodologies are uniquely suited to study how offenders sustain successful criminal careers, strategies used by offenders in committing crime, actions during specific crime episodes, and factors that influence criminals' career choices. King (1969) used the ethnographic method in his examination of illegal gambling and its interplay with organised crime and official corruption.

Agar (1997) argued that one of the strengths of ethnography is that this approach allows a researcher the flexibility to adapt methods to historical contingencies. He characterised ethnography as a sophisticated research approach whose "rich points, grounded theories, and adductive logic typically challenge and complicate prior theoretical and pragmatic frameworks" (Agar 1997:28).

Ethnography also involves a heightened and continual concern for the consequences of one's social and personal identity upon the observed situations (Van Maanen 1982). Van Maanen (1982) noted that researchers face two critical obstacles at the beginning of their research endeavour. First, ethnographers rely on a third party to gain access to the research population, and must therefore disassociate themselves from whatever interests and controls the third party may have over the subjects of the investigations. Secondly, he cautioned that social scientists should bear in mind that since they cannot provide any tangible or material reward to those who are to be studied, there are no compelling reasons for the people to participate in their studies.

WHY FIELD OBSERVATION?

Field observation was used by several researchers (Cressey 1969, Albini 1971, Ianni 1972, Block 1979, Reuter 1983, Abadinsky 1987, Chambliss 1988 and Jacobs 1994) in their studies of the Italian organised crime families in New York City. These studies provided certain kinds of insider perspectives that usually are uncommon in empirical works. Rubinstein and Reuter (1978) applied field research techniques in their studies of gambling and loan sharking, and made use of informants who were participants in the illicit activities they were studying. Chambliss (1978) used a combination of field observation, interviews, direct observation, and informants in his study of the organised crime networks in Seattle, Washington. Gardiner (1970) utilized the field research method in a study of organised crime and corruption in Reading, Pennsylvania. Andrade, Sifaneck, and Neaigus (1999) applied the field research techniques in their study on the drug-use patterns of non-injecting heroin users and their relationship to the heroin markets on the Lower East Side of New York City. Field observation was also used by (King 1978) in his study on organised crime's involvement in labour unions, legitimate business, and corruption of public officials in the United States. Moore (1993) using the ethnographic method conducted a thorough study on the social network of young, recreational drug users in Western Australia. Ferell and Hamm (1998) effectively applied qualitative research approaches in examining the personal and professional tribulations of conducting empirical studies on deviant and criminal subcultures and provided methodological, theoretical, and political implications of field research on sensitive and taboo areas. Potter and Jenkins (1985) have successfully used field research in their study of organised crime operations in Philadelphia, Pennsylvania. Reuter (1983) employed field research methods in studying the gambling industry, and Potter (1986) studied the pornography and prostitution industries using the field observation method. There have, however, been few fraud-related field studies (Doig 1984, Braithwaite 1985, Clarke 1990, van Duyne 1993) and almost none on offenders themselves, though Levi (1981) dealt specifically with long firm fraudsters and Levi (1998) interviewed plastic card fraudsters. Shapiro (1980) used different research methods in her empirical work on the stock market, however, her study was focused primarily on the relationship between the Securities and Exchange Commission and corporate swindlers.

However, the use of field research and observational techniques does not require that we ignore all official documents and sources on organised crime. Using field observation techniques and insider interviews, Hobbs (1988) successfully analysed the entrepreneurial culture of London's East End and the similar subculture of the police detectives working in the area. Levi (1981) combined interviews with the use of official documents in his study of the organisation and control of long-firm fraud in England.

Another research method that is being frequently used by researchers in crime-related studies is the self-report survey. Self-report studies are conducted mostly in the United States, as has most of the works on instrument construction and methodology (Block 1984, Klein 1989). Successful and reliable self-report studies have also been conducted in Germany and Holland (Klein 1989) and in some developing countries (LaFree and Birkbeck 1991, Priyadarsini and Hartjen 1981). Successful empirical studies on serious adult property offenders have been conducted (Burnett 2004, Siegel 2000, Benedict and Huff-Corzine 1997), including Wolfgang's et al. (1986) study on "Delinquency in a Birth Cohort" in Philadelphia, Pennsylvania using the longitudinal method. However, self-report approach was deemed inappropriate for this study because although it has become increasingly sophisticated through the years, most self-report studies are conducted with juveniles for relatively minor violations, mostly in school settings (Reuband 1989), and not with the adult population for serious offences, as are the subject of this study. Furthermore, quite apart from the ramifications for my future in the NYPD, asking a random sample of the upper-class population about their involvement in securities fraud did not seem intuitively to be likely to generate a yield proportionate to the effort that could more fruitfully be applied in other directions.

A survey instrument was not used in this study because not only was a survey inappropriate, survey questionnaires normally involve the use of simple questions that allow no follow-up to probe the respondents (Nachmias and Nachmias 1987). The researcher using a survey tool also loses control over who actually fills out the questionnaire; beside there is the danger of a low rate of response. Moreover, if those who respond to surveys differ systematically from those who fail to participate in the survey, then the survey result will be systematically biased (Block 1993).

Even while acknowledging the strengths of the qualitative method, some scholars have argued that other approaches such as the use of quantitative analysis (Rechardt and Cook 1979; Noblit 1977), archival data (Maltz 1995), and computer analysis (Becker 1978; Fritz 1990; and Becker 1982) should not be neglected. Fritz

(1990) noted that the exploration of new topics and issue areas in ethnography is intrinsically linked to the process of data analysis. He suggested that contemporary computer software such as SPSS and the Quantitative Analysis in Lisp (Quail), a command line programming and a display-oriented environment for carrying out quantitative analysis could be useful in conducting inductive and deductive analysis, and in checking the reliability and validity of qualitative data.

SOURCES OF DATA

The primary sources of securities market data used in this study were generated from field observations at XYZ Securities located in the Midtown area of Manhattan, and from interviews conducted with law enforcement officials and attorneys from Manhattan and Kings Counties District Attorney Offices. An attorney at the New York State Attorney General's office was especially helpful in leading me to some of the data on securities fraud that has been gathered by that office.

Interviews with attorneys at the Manhattan District Attorneys Office produced some historical data on the entry of organised crime into the stock market. Pertinent data on some high profile cases of securities fraud were collected from that office. My interviews with Mr. Jay Shapiro, the former Deputy District Attorney and head of the Rackets Bureau at the Kings County DA's office and his deputy elicited some useful data on the activities of the Russian-origin criminals in the securities market. Interviews of two former inmates who are affiliated with Russian organised crime by a sergeant assigned to OCID produced a wealth of information and detailed insight into the operation of syndicated groups on Wall Street, although their response may be mixed with biases and ambivalence. Of course, caution should be exercised in the use of these data because of their inherent limitations. Data on organised crime groups gathered from my work assignments, wiretaps, police informants and undercover officers were utilised, in appropriate cases, because the information gathered from convicted swindlers in public settings and interviews are generally filled with biases since after-the-fact retrospection is prone not just to subjective reinterpretation, but to self-serving minimisation of blame for oneself and maximisation of blame for the target.

How do organised crime figures perceive their roles within the securities industry? How do they justify their involvement in stock frauds? Answers to these and other questions were partially obtained from two members of the Colombo crime family following their arrest by a detective assigned to NYPD'S Organised Crime Investigation Division on July 17th, 2000. The interviews were given with reluctance and reservations in spite of a tradition of silence repressing open communication. The reasons for their selection and the scanty information I gleaned from the interviews are discussed later in this chapter.

SECONDARY SOURCES

The official records used in this study include crime records of organised crime figures arrested by police, prosecution and judicial records of persons against whom charges were filed, prison records of those convicted and sentenced to terms of imprisonment or fine and records of administrative hearings by the Securities and Exchange Commission.

The raw data that were obtained from law enforcement agencies capture the following information:

- Name of organised crime members and their New York State and FBI identification numbers.
- Their date of birth, sex and date of arrest.
- The court docket number and court where they were tried.
- The class of the top charge, other charges, and the criminal code they violated.
- How long the crime was committed before their arrest.
- The number of co-defendants on the charge and the crime family or criminal group they belonged to.
- The amount of the fraud ($388,335,000.00).
- The disposition/outcome of the case.
- The penalty they received and the sentence date.

Although I ran into some difficulties in obtaining data from the Securities and Exchange Commission initially, the break came when a friend at the SEC New York Office agreed to make copies of some of the randomly selected cases available to me on the condition of anonymity of the source. I owe some of the details in the cases that are discussed in the study to this unparalleled assistance.

The common criticism of official statistics is that they do not reflect the real incidence of crime. They only reflect crimes known to law enforcement agencies and are variably reported and recorded (Maguire 2002). But documents represent one type of data, and government documents provide researchers with the opportunity to observe for themselves, phenomena that otherwise could not be observed first hand. Although official data may be biased, these are important data in there own right

(McCall 1976), though they have to be interpreted in the light of the structuring that went into them.

Government information in the form of congressional hearings, Securities and Exchange Commission (SEC) hearings and reports, New York Stock Exchange (NYSE) releases and National Association of Securities Dealers (NASD) reports are also incorporated in this study as research data.

Government commission reports and congressional hearings are suspect because one cannot control the questions to be asked. On the other hand, releases by Self Regulatory Organizations (SRO) such as the NYSE attempt to mobilize public opinion by selectively releasing information, which publicizes achievements at the expense of comprehensiveness, which meets the rigorous standards of scientific validity (Moore 1974).

Gallager and Cain (1974) argue that even some scholarly literature on organised crime may either rely too heavily on journalistic sources, which tend toward the sensational, or on government documents, which tend to be suspect on their face. Block (1978) observed that some literature on organised crime suffer from reliance on the unsubstantiated accounts of informers and the ideological preconceptions of law enforcement agencies. Yet, despite some of these limitations, documents from governmental agencies and journalistic articles represent the most comprehensive thinking on the subject of this investigation and are useful pieces of data that should not be discarded.

In addition to official data, this study also randomly assembled over 100 articles on organised crime activities in the securities market that were published in various newspapers throughout the country. These articles were obtained from the

New York Public library and from the newspaper articles on organised crime stored at the Organised Crime Investigation Division.

The bulk of writing and research by journalists may appear to lack specific details when dealing with white-collar crime. The reason for the scarcity of detail in some journalistic accounts, as Jacobs (1970) explained, is because journalists often rely upon discrete bits of information to construct their analyses and arguments about the nature, structure, and function of organized crime. Despite these seeming limitations, Nelli (1976:32) submitted that "Newspaper stories and reports, when used with discretion, may greatly add to one's understanding of syndicate activities. Effective crime reporters are among the most knowledgeable syndicate experts, for they have contacts on both sides of the law and as clear an understanding of events and procedures in the underworld as any contemporaries." This requires some sort of trust judgement, soundly based or otherwise, about the journalists and their editors, and an understanding of the processes of news production.

PROBLEMS ASSOCIATED WITH THIS STUDY

Concealment and reticence of information concerning the activities of organised crime figures is one of the most distinguishing characteristics of crime enterprises. But the act of conducting operations in secrecy is not unique to illegal enterprises.

Law enforcement officials and government agencies also withhold all sorts of information and intelligence they possess or develop about organised crime from the general public. Exemption 3 of the United States Freedom of Information Act 5 U.S.C. 552 (B) (3) as amended by Section 5 (B) of the government in the Sunshine Act, P.L.

94-409, approved on September, 13, 1976 and effective March 12, 1977 (90 Stat. 1241) requires that certain investigations by government agencies " be withheld from the public in such a manner as to leave no discretion." This Act covers all "matters occurring before the grand jury."

Federal grand juries are created by, report to, and are discharged by U.S. District Courts and their records are regarded as judicial and thereby exempt from the Freedom of Information Act. The Act applies mainly to executive branch records such as those of the Securities and Exchange Commission. Rule 6 (C), Federal Rules of Criminal Procedure (Title 18, U.S.C.) also provides for the secrecy of grand jury proceedings and punishment for contempt of court for unauthorized disclosure. For this reason, this researcher was unable to gain access to grand jury proceedings of two active securities fraud cases that implicated members of all five Italian-American organised crime and their Russian-origin counterparts in New York. A request to the U.S. Attorney for the Southern District to that effect was met with negative results. The information was later obtained through the assistance of one of the government employees who had access to the cases.

The Securities and Exchange Commission also put many stumbling blocks in my path and several problems were encountered in gaining access to records on securities fraud. The gatekeepers at the SEC's New York's Regional Office and at the commission headquarters in Washington were unwilling to release several of the commission files in which I was interested. This reluctance on the part of government agencies to disseminate information, even in closed cases, and the seeming impenetrability of organised crime groups pose serious challenges for researchers, even ones in relatively prestigious occupations such as mine. Even journalists and social scientists are sometimes constrained for various reasons to shelter some of their sources and data on organised crime from the public. Thus secrecy and its many complex variations, in addition to being a rule of conduct governing membership in underworld operations, permeates the professional groups concerned with the understanding and prevention of organised crime activities. An obvious reason for secrecy in organised crime groups is their involvement in illegal activities. But the degree of secrecy extends beyond the functional requisites necessary in successfully managing illegitimate enterprises and affects the social and personal behaviour of members. There is an aura of secrecy that is inherent in the activity itself. For this reason, social scientists that attempt to penetrate into organised crime groups as participant observers could endanger their own lives.

In addition to the danger inherent in organised crime study, researchers also face the hazards of possibly being forced to testify or compelled to participate in the illegal acts themselves (Symonds 1968). Gomez-Cespedes (1999) reveals the serious implications attached to the study of organised crime in Mexico and the dangers that empirical works on sensitive areas pose to researchers. An even more severe methodological problem is the vested interest of respondents in concealing, exaggerating, censoring, purifying and in other ways distorting the truth (Henslin 1972; Levi 1981).

Yet secrecy serves some useful functions for syndicated groups. Secrecy preserves group integrity in several ways. As a peremptory rule it precludes outside intrusion and disclosure of group operations. Secrecy reduces internal conflict and tension among members by regulating the conditions of violent reprisals for offences and by ensuring the silence of associates regarding the range and content of illegal activities. The prohibitions against appealing to outside authorities actually concentrate power in the hands of syndicate leaders, enabling them to exploit clients, and associates. So far, the research on illegal syndicates and their external operation and internal structures deriving from analyses of official data, field studies and journalistic accounts have provided only a glimpse of this secretive, complex and fluid phenomenon and it is difficult to know to what extent those glimpses are typical even of those groups that are known about, let alone those networked relationships that are less well understood.

My position as a member of the New York Police department provided some access to sensitive and useful data on organised crime that are not easily available to some other researchers. It is for this and other reasons that I set out to investigate this phenomenon and by doing so; make some empirical contribution to the body of knowledge on the influence of organised crime in the financial sector.

Ianni (1972) observed that secrecy pose a dual methodological problem in his research. One of the challenges was how to assess the reliability of the sources, while the other had to do with how much validity that could be assigned to the information that was gathered in interviews. Concerning the latter, the researchers in the Ianni study created a validity scoring scale attaching the highest significance and validity to the data gathered by observation where they were involved as direct participants. The second highest score was given to data gathered by observation where they were not direct participants and the lowest validity scores to data gathered in interviews. Since our department arrested the organised crime figures I interviewed, I was able to triangulate the interview data against standard available documented sources and their arrest records. Thus the interviews I conducted could be accorded a higher rating, since triangulation addressed the problem of internal validity and data consistency.

The challenge of external validity and generalizability of data collected from interviews was resolved with data from other sources, most notably, data from prosecutors' offices. Ianni (1972) also relied on data from other sources, mainly law enforcement agencies in solving the problem of external validity, since no field data on a New York based organised crime family existed prior to his study.

OPERATIONALISATION OF VARIABLES

The criminal justice system consists of the police, prosecutors, judiciary, corrections, parole board and probation. For the purposes of this study, the criminal justice system will be operationalised as follows:

Police: An organised body of municipal, county, state or federal agency engaged in maintaining public order, peace, and safety, and in investigating and arresting persons suspected or formally accused of crime. For the purposes of this endeavour, police will signify those law enforcement officials who are responsible for apprehending and processing organised crime figures on Wall Street. These would include members of the New York Police Department, the Federal Bureau of Investigation and law enforcement investigators assigned to the Securities and Exchange Commission on a (rotational) temporary assignment basis.

Prosecution will signify the New York District Attorney's Office, The Kings County District Attorney's Office, the United States Attorney for the Southern District of New York and the Office of the United States Attorney for the Eastern District of

New York whose offices indicted and prosecuted alleged organized crime figures who carried out various securities schemes in New York's financial district.

<u>The court</u> is the unit of government authorized or established by statutes or constitution and consisting of one or more judicial officers, which has authority to decide upon cases, controversies in law, and disputed matters of fact brought before it. There are various types of courts in the United States, but for our purposes, we would only be concerned with the New York State Supreme Court, a trial court, of which the primary function is to hear and decide cases, and the federal courts with limited jurisdiction over securities fraud cases.

<u>Correctional agencies</u> mean federal, state or local agencies under a single administrative authority, of which the principal functions are the intake, screening, supervision, custody, confinement, treatment, disposition, or investigation of alleged or adjudicated members of organised crime who were indicted or convicted for security fraud-related violations.

<u>Parole Board</u> means any federal or New York State commission that has authority to release on parole any organised crime figure that was committed to prison, to revoke parole or other conditional release, and to discharge from parole or other conditional release status.

<u>Probation</u> will indicate a correctional agency of which the principal functions are the supervision of convicted members of organised crime who are placed on probation status.

The amount of illegal money generated through criminal activities will be a proxy for the success or failure of efforts by criminal justice agencies to combat organised crime. (Though I acknowledge that a shift from 'more harmful' to 'less harmful' activities may not be reflected in reduced income to criminals.) Law enforcement initiatives will serve as the independent variable, while organised crime activities will be the dependent variable.

This research will focus on the collective efforts of the police, prosecutors, judges and the correctional institutions and the impact that their fight against organised crime has had on organised crime activities in New York. The effectiveness of law enforcement efforts will be signified by a reduction in the amount of money that organised crime generates, and an increase in the number of organised crime figures arrested, indicted, prosecuted and convicted for securities fraud. The success of law enforcement initiatives could also be signified by a reduction in the number of financial frauds committed by crime syndicates. The exact amount of money generated from organised crime activities may not be known. However, I will attempt to conduct independent investigations to arrive at a reasoned approximation of revenue accrued from securities fraud.

This study will also offer some analysis of the organisational characteristics of Italian-American and Russian-origin organised crime in New York's financial district. These organizational characteristics are as follows:

- Organisational Structure
- Leadership Style
- Size and Composition of Membership
- Methods of Recruitment
- Securities Fraud-Related Activities

The five organisational characteristics are defined for the purposes of this study as follows:

Organisational structure refers to the composition of Italian-American and Russian-origin organised crime in terms of rank and file and their code of conduct. An organisation is a "collectivity with a relatively identifiable boundary, a normative order, ranks of authority, communications systems, this collectivity exists on a relatively continuous basis in an environment and engages in activities that are usually related to a goal or a set of goals (Hall 1977).

Leadership styles refer to the way organised crime leaders govern their members and direct their securities fraud operations.

Size refers to the total number of active members in Italian-American crime families and Russian-origin syndicates in New York. Active members are defined as those members of organised crime groups who are not currently incarcerated. Composition includes such variables as their county of residence and criminal history.

Methods of recruitment refer to the process through which organised crime figures recruit members into their white-collar crime operations.

Securities fraud means fraudulent transactions involving stocks, bonds, certificates of deposits, etc, etc, and other financial instrument that cause investors to lose a portion or all of their investments.

INTERVIEW OF ORGANISED CRIME FIGURES

Although nineteen members of the Italian-American organised crime and eight people connected to the Russian organised crime are known to me, due to lack of cooperation by most of the above, only two members from each of these syndicated groups were interviewed directly by me. These former organised crime members whom I interviewed were recommended to me by the Executive Officer of the

Organised Crime Investigation Division. Although they are not registered as paid department informants, the basis of the recommendation was the proven accuracy of the information on organised crime they had provided to the department in the past. The interviewees were asked a set of open-ended questions relating to the organisational structure and operational strategies of organised crime on Wall Street.

However, this researcher determined the way the questions were presented, so that it would be flexible enough to fit each specific interviewee. This flexibility allowed me to reword a question in a way that the specific interviewee could understand, and ask for additional information and clarification. In some cases, I rephrased questions that were of a personal or sensitive nature to the interviewee. During the interview, the subjects were given the opportunity to answer the questions to the extent necessary. There were no restrictions on the length of each interview. I will discuss later the conditions that surrounded these interviews.

The first interview of Mr. P.G. M. lasted four hours. Mr. C. B. was interviewed for three hours and twenty minutes in the office of the Executive Officer of NYPD's Organised Crime Control Bureau. The interview was originally scheduled to be held on Hudson Street in the office of a former Corrections Commissioner who was instrumental in setting up the interviews, but the venue was changed for the safety of the interviewee a day before the meeting.

In a face-to-face interview, accurate and credible information can be obtained only if the person providing the information displays a sense of trust in the interviewer. If the interviewee thinks that any information he discloses to the interviewer may be used in ways that may be disadvantageous to the interviewee, he or she will be less likely to tell the truth. Thus, the development of a comfortably trusting relationship is the first step in a face-to-face interviewing process.

During the interview, the subjects were given the opportunity to answer the questions to the extent necessary. There were no restrictions on the length of each interview. The interviews were semi-structured and un-standardized. The violent response of organised crime figures to individuals who attempt to seek information about their illegal activities, and which could provoke a physical threat to my own safety prevented me from contacting some of the organised crime figures known to my department. Field observation of organised crime members during the transaction of securities schemes was impossible for the above reason as well.

To overcome these shortcomings, I enlisted the help of another detective, also assigned to Organised Crime Control Division (OCID), who has infiltrated the Columbo crime family and has been working on the securities fraud related activities of that crime family for over eight years. He was able to place himself in the universe of both the Columbo and the Luchese crime families and observed several of the securities schemes that were conducted by these crime families between February 1999 and July 2000.

A sergeant in OCID, who is considered a "made member" of the Genovese crime family, but is actually an investigative supervisor with our department, did the field observations of the Genovese crime family.

An OCID detective assigned to then Trade Waste Commission (renamed Business Integrity Commission in 2002), who is the department's undercover on the Gambino and Bonnano crime families was interviewed.

Some of the inferences that I have made in this study are based on their observations. The inability to obtain certain information from active organised crime associates was a very frustrating experience for me. However, two of the former members of organised crime whom I interviewed are on the Gambino crime family's "hit list" and their extensive involvement in Wall Street operations during their tenure provided some useful information and closed some of the missing gaps. I also checked the responses from these interview sessions with police and court records to examine consistencies and inconsistencies, and in most cases, they validated the data that was gathered from other sources.

In this study, I attempted to develop and gain the confidence and trust of the interviewee in three ways:

First, subjects were assured total confidentiality. Likewise, the interviews were conducted with utmost privacy and confidentiality without interruption with only the interviewer and the interviewee present.

Secondly, I revealed my identity as the confidential aide and assistant to the Executive Officer, Chief of Department. In that role, I had unrestricted access to sensitive and confidential data that the department stores. I showed the interviewees an abstract of the information that the department had on them, and by so doing demonstrated to them that I know several details about their lives. Their realization of my knowledge of who they were enhanced my ability to reduce the probability or potential for misleading responses.

Thirdly, I reassured them that the interview was being conducted as part of a doctoral project for the University of Cardiff, Wales and that the information they provided would be used solely for that purpose. "In Wales?" He asked. "Why Wales?" I told him that although I started my Undergraduate Studies in Europe, I obtained both my Bachelor's and Master's degrees from American Universities and wanted to conduct my doctoral work in a foreign country.

It is interesting to note that this same question was asked several times by my interviewees, after I indicated to them that I was conducting fieldwork for a University in the United Kingdom.

To further gain their confidence, I showed them a copy of the letter that Chief Louis Anemone, the recently retired Chief of Department had written to late Chief Michael Markman, the then Chief of Personnel and to the Police Commissioner, recommending me for the Finest Foundation Scholarship to enable me to undertake the study. Throughout the sessions, the interviewees were repeatedly informed that their names would neither be revealed nor would they be exposed in this report. This effort of assuring the interviewees that the information they provided would not be used inappropriately and the assurance that their identities would remain anonymous was crucial in establishing the trusting relationship needed to obtain reliable information and for gathering falsifiable data on the activities of organised crime in New York's financial district.

I had intended to tape-record all interviews; however, this request was declined by some of the interviewees for various reasons. As an alternative method, I took notes during the interviews, in most cases, while the interviewees were speaking. There were other sessions where it was more appropriate to take mental notes and in those cases, I did the writing immediately following the interviews.

A total of 40 interviews were conducted with persons who are familiar with the issues being researched. These included police personnel, organised crime figures and their associates, prosecutors, college professors, one of whom served as my unofficial supervisor, eight stock-brokers and one Vice President of an Investment firm on Wall Street.

Experience has shown that there is often a "Snow-balling" effect as qualitative research progresses. Each subject interviewed introduces the researcher to another interview subject. I found this to be true when interviewing prosecutors and law enforcement personnel. But my interviews with organised crime figures and associates did not produce a snowballing effect. The organised crime figures I interviewed were reluctant to involve other people. Ianni (1974) found that the nature of organised crime activity puts a major strain on interpersonal relationships with informants and may even endanger one's life, when it leads to the exploration of information that the group does not want exposed.

It is for this reason that I enlisted the help of a captain in identifying the organised crime subjects who were interviewed for this project. Seven of the organised crime members I contacted, declined my request for an interview. But these difficulties notwithstanding, I believe that sufficient data has been gathered to answer the questions that this research set out to answer.
Each of the major areas of concern I examined was thoroughly "saturated" (Glaser and Strauss 1967) until additional data appeared redundant. Theoretical saturation is reached when further detail makes little sense in answering the core research questions (Glaser and Strauss 1967).

The formal interviews were guided by a set of structured questions (see chapter one, page 58) that enabled me to secure the data relevant to the themes raised in this study. All the data that was secured from these sessions were crosschecked. No interview data are reported in this study unless two or more persons gave the same information or there were other independent sources available against which to check the accuracy of the data.

Interviews were audio taped when it was practical. All of the audio taped sessions were later transcribed into written form. There were times when I was reduced to taking notes at the time of the interview or immediately following the interview, and out of the presence of the interview subject.

In some cases, the prosecutors that I interviewed earlier in the study without a tape recorder were re-interviewed. What I found was that their words were carefully selected during the taped interviews compared with when the interviews were conducted without tape recorders. Organised crime on Wall Street is not a phantom menace, but a serious problem that should be of reasonable concern to the investing public. The question then is "why is organised crime involvement on Wall Street any worse than swindles by sociopathic business people?" Many of the 23 investors I interviewed maintained that organised crime involvement on Wall Street is especially troubling because since organised crime operates mainly in underground economies, these scammers may not have verifiable tangible assets, if a judicial injunction granting investors monetary remedies is won after a judicial proceeding. These investors were identified from the complaint reports that they filed with the New York Police Department.

On the contrary, when the scheme involved fraudulent business people who were part of a legitimately established and reputable firm with assets, the investors were compensated for some of their losses with the frozen assets of the subject firm following a judicial decision.

INVESTIGATIVE REPORTS, PUBLISHED WORKS, AND DOCUMENTS

Glaser and Strauss (1967) observed that every book is as good as the anthropologist's informant or the sociologist's interviewee. They argue that published works may even be superior to informants' accounts in that they are based on empirical procedures and are more reliable than an informant's memory. Several published works, including some authored by Levi, who supervised this project, government documents, investigative reports, prosecution and court material as well as reports of SEC hearings were reviewed for information relevant to this study. Some of these materials were also employed to formulate the historical basis for this investigation. Reuter (1986) agrees that some of the most interesting studies of both the structure and operation of organised crime have been written from historical records.

LIMITATIONS OF THE STUDY

Although this study examined a few active cases involving organised crime and securities fraud, the bulk of the data upon which this research is constructed came from closed cases.

VALIDITY

The validity of much of the data collected has been tested through the triangulation of interview data, direct observation and records (Denzin 1970). Triangulation means the collection of data utilizing different approaches with respect to a single research question. I triangulated the data that was collected by using interviews to verify data obtained from published sources and criminal justice records. The strength of such a multi-method inquiry stands on what Van Maanen (1982) refers to as the "triad". Each leg of the triad represents a unique mode of data collection, which presents the researcher with a different vantage point from which to study the issues that this study provoked. It also generates a way of examining the mutual consistency of perspectives. However, inevitably, some information cannot be triangulated and judgement calls have to be made about its use.

CONCLUSION

Atkinson (1990) and Hammersley (1992) noted that critics of the ethnographic method are often quick to challenge the generalizability and representativeness of single case research. But Denzin (1970:12) argued that "researchers must have confidence that their observations are not only typical of those they have studied but could be generalized to other groups and individuals as well." However, that confidence can be misplaced, so one must examine analytically how plausible it is that other studies might generate similar results without being dependent on the same sources(s). No attempt was made to carry out the research interviews trans-nationally, but in any event, Hobbs (1998) argued that a better understanding of organised crime on an international scale could be gained from analysing its local manifestations.

In his defence of the ethnographic method, Hammersly (1990) observed that much of what ethnographers seek to discover is common knowledge that others have already acquired. Field observations are merely an attempt to learn the norms, patterns of behaviour and ways of life. This quest for knowledge is common to all humans.

After all the interviews and observations pertaining to this study have been concluded, I reassessed and re-evaluated the data that was obtained and attempted to verify them through further interviews with experts on organised crime manipulation of the stock market at the Manhattan District Attorney's Office. The Deputy District Attorney and Head of the Rackets Bureau at the Kings County District Attorney's office and an NYPD'S securities fraud investigator with extensive knowledge about organised crime operations in New York were also re-interviewed.

By obtaining information from law enforcement files, commission reports, prosecution data, and the financial community in addition to interviews and personal observations, I crosschecked the accuracy and precision of the data that was gathered to increase the validity and reliability of this research project. However, in interpreting the final result of the study, the reader should exercise strong caution and maintain as much reflexive self-critique as possible. The theoretical perspectives that are used to advance the arguments in this study are discussed in the next chapter.

CHAPTER THREE

THEORIES OF CRIME CAUSATION

INTRODUCTION

This chapter offers a review of the some of the crime causation theories and criminological perspectives that will serve as the theoretically conceptual framework of the study.

Although organised crime is often discussed as a collective criminality issue-indeed, though individuals can organise some serious crime for gain as individuals, it is meaningless in legal as well as sociological terms without joint action-, it is appropriate to discuss some crime causation theories because some of these theories lay the foundation upon which this work is going to proceed. Some of them also attempt to provide some explanation for the emergence and endurance of organised crime in American society (Albanese 1989; Kenney and Finkenauer 1995). Crime causation theories provide useful explanations for both individual and collective involvements in crime.

ROUTINE ACTIVITIES THEORY

The routine activities theory, also referred to as opportunity theory (Cohen and Felson 1979) argues that criminality is influenced by how three specific variables are distributed in time and space. Crime occurs when motivated offenders, suitable targets, and the absence of guardianship converge. The theory has three main aspects: articulated theoretical framework, standard methodology for tackling specific criminal activities, and opportunity-reducing techniques. In his examination of the concept of criminal opportunity, Willison (2000) identifies deficiencies in existing notions of "opportunity," arguing that opportunities for crime arise in and as a consequence of the daily workings of an organization. Consequently, any approach used to address those elements involved in these daily workings must also explain how interactions between them may create suitable targets.

STRAIN THEORY

Strain theory examines the differences between the aspirations of individuals in a society and the opportunities that are available to them. The theory postulates that everyone, irrespective of their economic class, accepts common success goals and common conventional norms. However, those who occupy the lower economic stratum of our society are deprived of the means to achieving their desired goals. Deprivation of the means to economic and social success is seen as a major source of strain for lower class individuals. Strain theory assumes that there is a relationship between socio-economic status and criminality (Merton 1957).

Cohen (1955:48) found that delinquency is the end result of frustrations that are produced when lower class individuals are judged by middle-class standards against which they cannot compete. Following Cohen's argument, it can be deduced that organised crime is therefore a response to overcome economic deprivation by weakening the mechanisms of social control and causing a "reaction formation".

Strain theory also seeks to explain what happens to people when the controls imposed by social life are relaxed or no longer function as in periods of great social change. Under ordinary conditions, normative restrictions are clear and most people adhere to them. But when society becomes disorganised, the mechanisms that define normative restrictions become weakened, resulting in social conditions that Durkeim (1951:35) referred to as "anomie", or a state of normlessness.

Merton (1968) in seeking to apply the concept of anomie to deviant behaviour argues that anomie arises from an incongruity in society between emphasis on the importance of attaining valued goals and the availability of legitimate institutionalised means to reaching these goals. Strain theory postulates that delinquency and (under some conditions) organised crime are products of the frustration and anger that some people experience over their social and economic failures. According to Merton, the most efficient available means to overcome social and economic failures, whether legitimate or not, appear to be acceptable. As such, the "integration of society becomes tenuous and anomie ensues" (Merton 1968:199).

Sub-Cultural Strain Theories (Miller 1982), Cohen's Theory of Delinquent Sub-Cultures (1955) and Cloward and Ohlin's Theory of Differential Opportunity (1960) are extensions of Merton's work. Merton postulates that emphasis on culturally defined goals invite "exaggerated anxieties, hostilities, neurosis, and antisocial behaviour" (Merton 1968). Of these, the most relevant to organised crime is the Cloward and Ohlin work, which notes that where adult criminal opportunities exist, integration into that stable criminal subculture becomes the primary method of adaptation to strain whereas when it is absent, conflict and retreatist subcultures develop. (Though this fails to take account of the importance of extortion and credible threats of violence to the success of organised crime in America and elsewhere.) Also, to the extent that these are drug-using "retreatist subcultures", they need to buy their supplies from dealers, which requires some level of organised, though not necessarily Organised Crime as in the New York Five families.

Strain is defined by Kornhauser (1978:147) as the frustration of the socially induced need to achieve a high level of success and is indicated by a discrepancy between aspiration and expectations. This frustration is overcome, according to Merton, through four types of deviant activities: innovation, ritualism, retreatism, and rebellion.

For the purposes of this study, "innovation" seems to be more relevant. The innovator, who is unable to achieve success through conventional or legitimate means, attains it through the violation of social norms. Strain theory maintains that organised crime is a mechanism by which an individual or group obtains the socially approved goals of wealth and power through "innovative" or illegal means. Merton (1968:200) suggested that Al Capone represents the triumph of amoral intelligence over morally prescribed failure, when the legitimate means for upward economic mobility are closed or narrowed in a society which places a high value on economic success and social mobility for all its citizens.

It is because of such normal goals as economic stability and such moral aspirations as the desire for social advancement and prestige, that Bell (1964:117) argued that in the "complex and ever shifting structure of society, organised crime is one of the crooked ladders of social mobility in American life."

Strain theory appears to provide a reasoned theoretical foundation for the explanation of organised crime. Strain, like cultural deviance theory, assumes that people are devoted to following the dictates of their culture, and that criminal behaviour is an expression of conformity to cultural values (Park 1952; Zorbaugh 1929; and Thrasher 1927). In cultural deviance theory, crime is normative. In strain theory, crime is the result of exposure to a cultural ideology in which failure to achieve wealth and social prestige is viewed as a moral defect (Merton 1968).

In his criticisms of strain theory, Kornhauser (1978) questioned the belief that criminal values are rooted in cultural values. Woodiwiss (1987) suggested that criminality sometimes emerge as a result of government policies that create opportunities for crime. He observed that government policies, such as "prohibition" created or worsened a situation of widespread lawlessness in the United States (Woodiwiss 1987).

In their criticisms of strain theory, Hirschi (1969) and Johnson (1979) contend that their studies found no significant relationship between socio-economic status and delinquency, at least in relation to the proportion who had committed some offence. Empirical support for the relationship between socio-economic status and delinquency is conflicting and inconclusive. Works by Cartwright and Howard (1960) Erickson and Empey (1965) and Gordon (1971) concluded that there was a relationship between one's socio-economic status and criminality. Shapland (1978) proposed that the studies which failed to find a relationship between socio-economic status and deviancy were not examining the socio-economic variable within the proper framework. She argued that the effect of socio-economic status on criminality is really an indirect one, operating through various social controls. Shapland (1978) concluded that socio-economic status, if examined in a social control context, stands as a factor leading to the emergence of deviancy in our society.

Sellin (1938) and Miller (1958) proposed that criminals are socialized members of the groups to whose cultural codes they invariably conform. Erickson (1962:18) in his criticism of strain theory argued that "Deviance is not a property inherent in certain forms of behaviour, but it is a property conferred upon those forms by the people that directly or indirectly witness them."

Miller (1982) offered sub-cultural theory as an alternative to strain theory. Sub-cultural theory assumes that deviancy varies by social class. By engaging in criminal behaviour, the lower class individual is simply embracing and fulfilling the norms of his or her culture. Miller (1982) sees the necessity and desire to form criminal enterprises as distinctive features of lower-class society. Therefore, from a social control perspective, lower-class individuals are less likely to believe in conventional values.

This subsequent freedom from conventional society gives a deviant the rationale to seek an alternative ladder for upward economic mobility in organised crime. However, he did not examine the preconditions for organised crime.

Other criticisms of strain theory, particularly those centered on the notion that universal achievement values generally lead to high aspirations have led theorists such as Hirschi (1969) and Kornhauser (1978) to condemn strain theory and recommend greater concentration on control models as explanation of deviance. Hirschi (1969) and Kornhauser (1978) suggest that it is ironic that strain theory traces its descent from Durkheim because in their view, Durkheim was a control theorist. Durkheim (1951) stated that when a society is disturbed by some painful crisis or experiences and abrupt transitions, it is momentarily incapable of exercising its influence. It could be argued therefore, that deviance is the result of an absence of restraint upon aspirations and not the stress caused by an absence of legitimate means to attain these aspirations.

THE ALIEN CONSPIRACY THEORY

According to this view, the essence of organised crime in America is embodied in a conspiracy of outsiders (Cressey 1969). The model asserts that Italian immigrants around the late nineteenth century and early twentieth century imported organised criminality to the United States. Some of these immigrants belonged to feudal, secret, and outlawed societies that planted the seeds from which contemporary organised crime groups emerged. The alien conspiracy theory has its origin in the way government officials and law enforcement authorities in the United States portrayed organised crime. It produces a focus on the gang actors and their internal relations rather than on the contexts in which gangs flourish. One can draw an analogy between this and perceptions of the Communist "Evil Empire". In 1951, Tennessee Senator Estes Kefauver launched an investigation into organised crime before the special congressional committee to investigate crime in interstate commerce.

The Kefauver Committee found that there was a nationwide association of criminals; descendants of the Sicilian Mafia, who controlled vice activities and other rackets in many large American cities. Further evidence of the existence of a nationwide confederation of criminals came in 1957, when Senator John McClellan's Senate Committee found that there was extensive organised crime involvement in the labour union movement and in legitimate business (Kwitny 1973). Later that year, seventy-five of the nation's reputed organised crime members were discovered at a meeting in the home of Joseph Barbera, a mob leader, in Appalachian, New York (Rubinstein 1978).

The case for the alien conspiracy theory was further strengthened in 1963, when Joseph Valachi, a member of one of New York's five crime families, testified before the Permanent Sub-Committee on Investigations. Valachi labelled organised crime as "La Cosa Nostra," describing it as a nationwide confederation of criminal groups linked together through a national commission (Cressey 1969)

The federal government subsequently adopted the term La Cosa Nostra in an effort to differentiate American organised crime from the Sicilian Mafia. The Kefauver Committee hearings of 1951 and Valachi's testimony gave rise to the belief that organised crime was an alien conspiracy that was imposed upon American society by new Italian immigrants. Donald Cressey (1967) in his work on "The Structures and Functions of Criminal Syndicates," argued that La Cosa Nostra consisted of twenty-four crime "families" whose members were exclusively men of Italian descent. Cressey (1969) upheld the earlier view by contending that the essence of organised crime in America is embodied in a conspiracy of outsiders.

Several academic works that came after Cressey's (Cook 1973; Hammer 1975; Pace and Styles 1975: Chadler 1975; and Bonanno 1983) accepted the conspiracy theory.

The four cardinal arguments that came out of the alien conspiracy theory are:

1. Organised crime members exhibit many structural features of legitimate corporate businesses.

2. Organised crime syndicates, like legitimate businesses, seek to control criminal enterprises by expanding in size and forming large networks both nationally and internationally.

3. Ethnic or racial identity is the key to determining group membership in these criminal organisations.

4. Organised crime groups undermine the very foundations of democracy by corrupting public officials in catering to the criminal enterprise.

Albini (1971) dismissed these observations on the premise that the theory ignored the social conditions that gave rise to organised crime in this country. He argued that organised crime was not the result of a transplanted Sicilian Mafia, but the product of American society. Albini (1971) noted that many of the Italian and Sicilian immigrants who embraced organised crime did not come to this country as criminals. Other academic works on the Sicilian Mafia have also cast serious doubts on the claim that a highly structured and unified group of Sicilians imported organised crime to the United States. Block (1978) and Smith (1975, 1976) have shown that the origins of the Mafia importation myth came out of strong anti-Italian sentiments. The supposed consequences of the 1931 Castellemarese war, which is credited for restructuring the old Mafia into its contemporary corporate form, have been discredited (Nelli 1976; and Block 1978).

Bell (1964) argued that the Kefauver Committee hearings presented only law enforcement allegations without substantiating the contention that the Mafia organisations exist in the United States. Morris and Hawkins (1970); Albini (1971); and Albanese (1985) also questioned the candour of the Kefauver Committee hearings.

THE BUREAUCRATIC MODEL

A bureaucratic organisation is a hierarchical organisation characterized by specialisation of function, division of labour, and governed by impersonal rules of behavior (Weber 1946). It is a formal structural element of a type of human organisation (Stillman 1992). The first criminologist to apply the bureaucratic model to organised crime was Donald Cressey (1969).

Cressey (1969) argued that there were lots of "similarities" between legitimate corporations and organised crime families in terms of organisation. He maintained that organised crime groups are bureaucratic, and that the "family" is the basic unit around which operations are carried out. At the head of each crime family is the "boss" who like his counterpart in a legitimate organisations, or like a bureaucrat in a public agency, has the overall responsibility for the efficient operation of the "family business." (Though performance criteria are less developed and succession planning is often by direct family descent rather than meritocratic). Underneath the boss is an "under boss", which is the second in command and next in rank to the head of the family.

Parallel to the position of the under boss is the "consigliere", according to Cressey (1969). The consigliere occupies the office of a counsellor and he advises the members of the family, including the boss on matters that are pertinent to their survival. This position is usually reserved for an elderly member of the family, who in most cases is not involved in the day to day running of the crime enterprise. Below the under boss is the "capo regime", who serves as the intermediary between higher ranking members of the family and lower ranking associates. Some of the capo regime serves as head of the crime family's illicit operations. Working in close proximity with the capo regime are trusted associates from whom the "soldiers or button men", the lowest level members of the crime family take their orders. Beneath the soldiers, in this structure, are employees and commission agents who are not necessarily of "Italian" descent (Abadinsky 1994).

Cressey (1969) observed that there were twenty-four of these families in the United States, and that the ruling body which functioned as the legislative, judicial and executive authority over these crime families was referred to as the "Commission".

Several empirical works that came after Cressey's (Albini 1971; Ianni and Reuss-Ianni 1972; Chambliss 1976 and Reuter 1983) rejected the bureaucratic model, and criticized it for relying too heavily on official views of organised crime. Some basis for rejecting the bureaucratic model may be on the grounds that though these hierarchies exist, the extent to which they control day to day operations or extract a fee for dispute settlement and loaning corrupt government officials is in dispute. There are five Italian-American crime families in New York, and each of these families is hierarchical in structure. They are all governed by a set of rules, and assignments are generally given to those who are better disposed to effectively execute them. The administrative structure of these five families is similar to what one may find in legitimate organisations. Vincent Gigante heads the Genovese family, which is the largest and most prosperous crime family in New York. Dominik Cirillo, who acts as the crime family's chief executive, controls the day-to-day operation of this crime family. John Gotti Jr., the son of the late John Gotti Sr. remains at the helm of the Gambino crime family and controls its operations from a federal prison in Upstate New York where he has been confined since September 1999, following a racketeering conviction. John Gotti Jr. was re-indicted shortly before his release from a federal detention facility in September 2004 and rearrested on a racketeering charge. His uncle, Peter Gotti, who was incarcerated in January 2004 after a racketeering conviction, was overseeing the day-to-day operations of the Gambino crime family. The Gambino crime family is currently under the leadership of Arnold Squitieri pending the release of Gotti Jr. Joseph Massino, currently on trial for seven murders controlled the Bonnano crime family, the third largest crime family in New York, until he was replaced by forty-eight year old Vincent Basciano on February 18th, 2004. At the helm of the Luchese organised crime family is Vittorio Amuso, who ran the family's illegal enterprises from prison, through the former acting boss, Steven Crea. With Crea's imprisonment in 2004, the leadership of the Luchese crime fell on Joe Giampa, the family's current acting boss. The Colombo crime family, which is the weakest of all the crime families in New York is also bureaucratic in structure, and has Andrew Russo at the top of its hierarchy and Joel Cacace as its underboss. Alphonse Persico, the former boss of the Colombo crime family is currently (2005) in jail.

The only variation within the New York metropolitan area to the bureaucratic model of organised crime is found across the Hudson River, in the State of New Jersey. The most prominent of organised crime families in New Jersey is the Decavalcante crime family. This crime family is based in Elizabeth, New Jersey and has approximately seventy-five members. Following the incarceration of Mr. Giovanni Riggi, the former boss of the family, day-to-day operations were turned over to a committee consisting of three members. These members were former heads of the family's construction division, the New York operation, and the heroin division. One significant thread that holds true for both the highly structured crime families in New York and the committee-run family in New Jersey is the desire for economic power. Membership in these organisations is also similar to the employment process that one undergoes in a legitimate enterprise with slight variations.

To become a member of one of the Italian-American organised crime families in New York, the "button man, made man, wise guy, friend" as the new member is called, must be of Italian descent on his paternal side and must be sponsored by a senior member of the family in which he is inducted. The name of the candidate is passed to the "bosses" of the other New York crime families for approval. When the "books are opened", a term used for the approval by the commission to induct new members, and with the final endorsement by the "boss" of the sponsoring family, that person is inducted into the family, through a secret ritualistic ceremony in which the new member takes an "omerta", or an oath to keep all the affairs of that crime family in complete secrecy. The new member also vows to put the crime family above all others. Once the induction process is complete, the new member becomes a "soldier", assigned to a "capo regime" and cannot be harmed by any other member of any organised crime family without the approval from the boss of his family.
At its peak, the five organised crime families in New York had over two thousand members and thousands of associates. At the moment, police records from the Organised Crime Control Bureau have a total of eight hundred members listed in the database from all the five crime families. Incarcerations of older members account for some of the reduction in organised crime membership in New York City.

THE ENTERPRISE THEORY OF ORGANISED CRIME

The enterprise theory of organised crime holds that the "crime-enterprise is a durable market-orienting unlawful cooperative, featuring a hierarchical organisation whose principal means of making profits is by breaking the law" (Van Duyne 1996). Many of the economic and business principles that are applied in the legitimate business sectors appear to be operational in illegal enterprises (Alexander and Caiden 1985).

Smith (1980) postulated that organised crime exists to provide goods and services to customers whose needs have not been met by legitimate means across the demand and supply spectrum. Thus, when a high level of demand for specific goods and services hold the promise of very high profits and rewards, criminals organise and enter the marketplace to fill the gap. But if we shift the demarcation point on the continuum that divides what is illegal from what is legitimate, we would be altering the market conditions that produced organised crime.

Passas (1995) divides the criminal market into the illegal goods market and the market for legitimate goods and services which are provided through illicit means. Enterprise theory is therefore an attempt to understand what organising criminals do to make profits out of their crime enterprise. The theory looks at the market behaviour of crime syndicates, and does not attempt to define the concepts of organised crime (Van Duyne 1996).

Enterprise theory will be applied in examining the activities of Italian-American organised crime families in New York, who are now working within the legitimate market and in a less hostile environment like the National Association of Securities Dealers (NASD). The Italian-American crime families have become a settled element in securities fraud in New York's financial district. They are reinvesting their profits and, in some cases, taking over some brokerage firms on Wall Street with the intention of running them as fronts for fraud.

The Italian-American crime families would not have attained the successes they have had on Wall Street without the assistance of outsiders who have no significant ethnic ties to any New York organised crime family. But not all of these fraudulent activities escaped the attention of the authorities. After over four years of investigation, the U.S. Attorney for the Southern District indicted 120 people on Thursday June 15th, 2000 for stock fraud on Wall Street in what is considered one of the biggest round ups of organised crime members for securities fraud in U.S. history (New York Daily News 2000). For once, this sort of claim appears to be true.

The thought provoking aspect of this indictment is that although the Genovese and Colombo crime families had the leading role in the schemes, all the five organised crime families in New York, executed the fraudulent activities jointly in collaboration with seven criminals connected with Russian organised crime, including a New York Detective who retired a week earlier to protect his pension (unless this was a remarkable coincidence, it is possible that he may have got wind of the pending indictment.) This scheme was similar to the chain of activities in illegal gambling that Reuter (1986) examined. Does the complexity of securities fraud require some type of a partnership between competing criminal groups? This question is further explored in chapter four because most of the data that I have gathered so far had very few cases which were "joint ventures" between all the major players of the criminal underworld and some top securities expert and professionals as was the case with this particular indictment.

Some of these outsiders include legal and financial professionals who have played crucial roles in helping criminal trading communities achieve their goal within the securities industry. Several paid police confidential informants indicated during their conversations with investigators that some of these professionals did not know that they were working for organised crime. This is plausible since the informants gained nothing from pushing this view.

Although various types of securities schemes and their perpetrators will be analysed, this work will focus on the securities-related activities of members of the Italian-American organised crime families and Russian-origin criminals in New York.

As Wickman and Dailey (1982) observed, "market forces operating past the point of legitimacy establish the primary context" for the entry of organised crime into the securities industry.

AN INTEGRATED APPROACH

Smith (1980:375) argued that "each organised crime theory contains some truth, which means that a complete explanation for organised crime must call on each theory in some integrated way". One purpose for conducting qualitative research is to build upon existing theoretical understanding. Other empirical works on this subject have shown that beside social, biological and physiological theories, many economic and business principles also seem to be at work in the underworld as in legitimate business communities (Van Duyne 1993; Staw and Swajkowski 1975; Clinard and Yeager 1980). This study will examine the extent to which the above theories can be used to explain the entry of New York's Italian crime families into the securities market on Wall Street. The roles played by the criminal justice system in shaping the direction of organised crime will also be examined. The goal of this research study is to contribute to the advancement of criminological knowledge and understanding of the stock market. The mechanisms and the modus operandi developed and employed by organised crime members and the network-type organisational design for exploitation of the stock market will be thoroughly elaborated in chapter four.

CHAPTER FOUR

THE SOCIAL ORGANISATION OF SECURITES FRAUD

INTRODUCTION

Chapter four provides an in-depth analysis of the social organisation of securities fraud, the public and government attitude toward this form of white-collar crime, and the methods employed by organised crime groups in fleecing investors on Wall Street.

The organisation of a securities fraud scheme requires a significant degree of cooperation, entrepreneurial skills, considerable specialisation, as well as a capacity for coordination.

Levi (1998a: 343) noted that crime should be viewed as a "business process, requiring funding, technical skills, distribution mechanisms, and money handling facilities." Securities fraud involves the assembling of professional financial talents, the coordination of efforts between market insiders and financial backers, some of who are external to Wall Street, and the timely execution of orders when the loot can be maximized. Unlike purse-snatching and other petty larcenies that the occasional criminal sometimes happens upon, securities frauds are planned and undertaken after useful data about the market and potential return have been thoroughly examined and analyzed. "Different forms of crime require different levels of organisation" (Levi 1998a: 456), and so does securities fraud, although different types of securities- penny stocks, blue chips- require different levels of organisation.

The stock market brings together sets of people who happen to share a common goal of trading in securities. Socialisation not only transmits culture, but also shapes self-concepts. Cressey (1995:500) argued that "the more cohesive the group, the greater the members' readiness to influence others and the more relevant the problem of conformity to group norms". In other words, the more tightly knit the securities fraudsters are, the stronger the group's influence will be on those who have agreed to join the scheme.

One important aspect of the stock market is that in securities schemes, people function like cogs in an elaborate social mechanism. They generally relate to one another, for the most part, as objects rather than as whole persons. The frequency of contact between the fraudsters is low and mostly restricted to instrumental contact.

In traditional organised crime operations on the other hand, social relations generally involve people who have known one another for most of their lifetime. Relationships in traditional organised crime are personal and individual emotions and needs are considered (Paoli 2003). Relations between the formal and informal economies clearly impact on, and are impacted on by opportunities for income generation, reinvestment and income re-distribution, all of which the stock market provide.

PUBLIC ATTITUDES TOWARDS SECURITES FRAUD

What is the attitude of the public and financial institutions in relation to the reporting requirement when they are victims of fraudulent securities schemes? Securities fraud constitutes one of the most expensive of all varieties of crimes to investigate. The amount of money involved in stock fraud cases is staggering. However, the uniqueness of securities fraud lies neither in the behaviour itself nor in the amount involved, but in social reaction to this form of criminality.

Although the effects of stock fraud on swindled investors are lasting, many people in the general population view securities fraud as being of relatively lower frequency, less harmful, less serious and less dangerous to society. In December 2001, I conducted a random survey of thirty college students, subway passengers, and pedestrians within the area of the New York Stock Exchange in Manhattan shortly after the Enron case was made public. Of those who cared to respond to my questions, over 80% said that they considered assaults and personal attacks on their person more dangerous than losing their investments in the stock market. My random survey- though not intended to be large enough for more than a working hypothesis suggested that securities fraud is probably not generally regarded as part of the major crime problem.

On Wednesday December 3, 2004, I conducted another random survey of pedestrians at the North East corner of Wall Street and Exchange Place, directly across from the New York Stock Exchange. I informed the pedestrians who cared to respond that I am a post-graduate student conducting a survey on the level of their confidence in the stock market and how harmful the collapse of their investment will be to them. Almost 80% of the 46 respondents who acknowledged that they had an investment on Wall Street indicated their awareness that the stock market is a risky trading house, and that the loss of their investment will lead to a temporary financial set-back as opposed to a permanent economic harm. Only 20% of the respondents felt that they would be financially ruined if their investments collapse. The public tends to be more afraid of being mugged, raped or robbed by a stranger on the street than they are of being swindled by a bogus investment consultant, even when the consultant is working for a New York organised crime family. Whether this reflects a scale of fear or harm cannot, however, be deduced. The absence of violence and the diffusion of victimization also mean that offenders are not likely to be seen as a dangerous threat to society.

This lack of populist appeal is important in the dynamics of crime control. Government agencies generally do not view securities fraud, or white-collar crime in general as major social problems (Levi 1987). Securities fraud is viewed as a less serious evil, even when committed by people with ties to organised crime. In the worst cases such as the WorldCom and Enron schemes where screaming victims lost their entire life's savings, the fraudsters were still accorded a non-adversarial treatment during congressional hearings, with few serious probing questions asked of them. According to Mr. Van Natta of the New York Times (2002), the Enron fraudsters received a cordial treatment during congressional hearings because "Enron spread contributions on both sides of the aisle." They however, got a harder time in the media once the collapse of Enron became a media-worthy scandal (Bloomquist and Orin 2002; Claffey 2002; Tift and Sullivan 2001; Eichenwald 2002b; and Henry and Lanier 2001).

Even the NYPD seven major classifications that are used to define the crime problem in New York City do not include any categories for fraud, reflecting also the FBI's omission of the category in "normal" crime statistics. Annual government reports on crime rarely mention securities fraud, and fraud does not figure in the uniform crime reports or most measures of crime indicators. This illustrates that the notion of crime itself is socially constructed and securities fraud is not readily defined as a social problem that requires immediate government intervention, since in most cases, the victims suffer only a moderate loss (though this is true of most household and street crimes for gain). Understanding the dynamics of personal interactions between traders on Wall Street, the public and institutional view of the market, and their relationship to the criminal justice agencies is important in understanding why there appears to be an ongoing rise in stock fraud on Wall Street.

CRIME CONTROL PROCESSES: DETECTION, PROSECUTION AND DETERRENCE

Securities fraud is particularly difficult to detect. Extensive investigations into securities fraud cases are time-consuming and very costly. What is the expenditure on enforcement and prosecution of securities fraud? (According to the most recent U.S. Department of Justice, Bureau of Justice Statistics Report on justice expenditure released in May 2004, the United States spent a record $167 billion for police protection, corrections, and judicial and legal activities in 2001. The nation's expenditure for operations and outlays for the justice system increased 366% from almost $36 billion in 1982 to $167 billion in 2001- a 165% increase in constant dollars). It is far from being an objective issue to determine how much of this budget should go on white-collar crimes in general and securities fraud by organised criminals in particular. However, eighteen percent of the NYPD budget, twenty-three percent of the local prosecutors' budget and almost 60% of the budget of federal enforcement agencies are devoted to combating white-collar crime. As shown by table 1 and figure 1 below, beside the enormous cost associated with investigating securities fraud, it takes longer to detect and unravel the complexity of different types of schemes on Wall Street as opposed to interpersonal crimes.

THE QUANTITATIVE ANALYSIS

After collecting all the data that were needed to draw an informed opinion (this process took a period of four years), I began the tedious process of coding the data into an SPSS format. After codifying the data, I came up with a list of variables, all of which were defined (see codebook). After defining the variables, I began inputting the data from the 116 cases that were selected using the systematic random sampling method from over three thousand organised crime cases stored in our department and at other law enforcement agencies in New York. The dataset as shown in the codebook (Appendix 24) has 47 variables. After all the data were entered, a system file was created in SPSS. A system file is a machine readable file that can be saved in SPSS format. Once the system file was created, I recoded the data to put them into two crime categories-securities fraud and interpersonal (violent) crime. Using the date of the first offence and the date of arrest, a detection time variable was created with three sub-categories (Zero to five months signified short detection time, six months to one year signified medium detection time and more than one year signified long detection time). A cross-tabulation was then conducted on the variables whose tables and figures appear in the text. The analysis in table I and figure I below shows that it takes longer for law enforcement agents to detect stock fraud than it does to detect interpersonal crimes.

Table 1: Cross-Tabulation: Offence Type by Detection time

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
detection time * offence type	116	100.0%	0	.0%	116	100.0%

detection time * offence type Crosstabulation

			offence type		
			stock fraud	interpersonal crime	Total
detection time	Short Detection Time	Count		20	20
		% within detection time		100.0%	100.0%
		% within offence type		37.0%	17.2%
	medium Detection Time	Count	4	11	15
		% within detection time	26.7%	73.3%	100.0%
		% within offence type	6.5%	20.4%	12.9%
	Long detection Time	Count	58	23	81
		% within detection time	71.6%	28.4%	100.0%
		% within offence type	93.5%	42.6%	69.8%
Total		Count	62	54	116
		% within detection time	53.4%	46.6%	100.0%
		% within offence type	100.0%	100.0%	100.0%

Chi-Square Tests

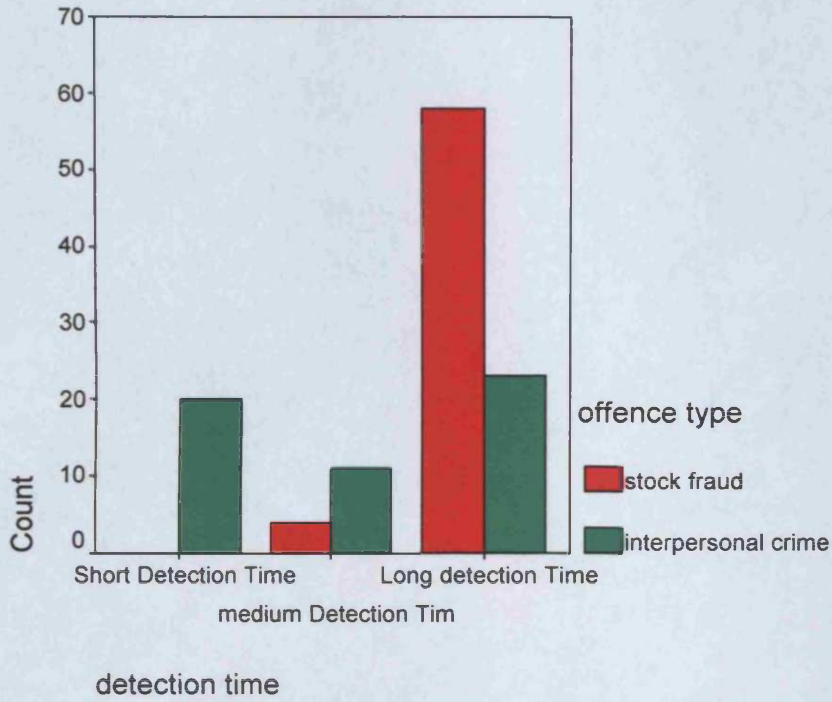
	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	38.019[a]	2	.000
Likelihood Ratio	46.204	2	.000
Linear-by-Linear Association	37.287	1	.000
N of Valid Cases	116		

a. 0 cells (.0%) have expected count less than 5. The minimum expected count is 6.98.

From this chi-square, we may infer that there is a significant relationship between detection time and offence type. We therefore can reject the null hypothesis that there is no relationship between detection time and offence type.

Graph

Figure 1: Offence Type by Detection Time



Beside a longer detection time, prosecutors also have to overcome the challenge of uncooperative witnesses who are reluctant to divulge information to prosecutors, particularly in cases where they may be implicated (Mann 1985). This observation is also true of mob scams and boiler-room schemes. Pinpointing responsibility in securities fraud cases is also very difficult since the unlicensed principal architects of a scheme frequently use "front men" who are licensed to trade on Wall Street.

The larger and more diverse these fraudsters are, the harder it is for enforcement agencies to attribute responsibility, and build strong legal cases against them. For these reasons, many stock fraud cases do not enter the criminal justice.

system but are instead settled at administrative hearings. These out-of-court arrangements are generally more lenient in comparison to penalties for interpersonal or street crimes (Katz 1979). But how does enforcement impact crimes in general, and what has been the impact of the criminal justice agencies on Italian organised crime families in New York's financial district?

Securities fraud gives rise to problems in civil law since the majority of stock fraud cases are handled administratively by self-regulatory agencies that were created to monitor and oversee trading activities. Securities fraud cases also tend to involve more high status offenders, few of whom are subjected to intensive surveillance like blue-collar "organised crime" or ordinary offenders. The high cost of detection and prosecution of stock fraud cases also protect swindlers on Wall Street. Some of these schemes involve fraudsters that operated from different countries, making it even more complex for any one individual country to prosecute (although the Financial Crimes Enforcement Network to which the United States, Canada, European Economic Community and Australia have subscribed may in time serve as a useful global enforcement tool against trans-national fraudsters). It is for this reason as well as a different philosophy of control that the SEC and other enforcement agencies tend to pursue offences that are less complex and less costly to investigate (Levi 1987a: 174).

Securities fraudsters can be mobile. Either physically or virtually, they move from one area to another, and across jurisdictional boundaries in search of potential investors that will fall for cold calling and hard-selling tactics that hold great potential for quick money (Langevoort 2001; Dodge 2001; Eck 1993). A typical scam artist as conventionally defined, will operate from another jurisdiction, separate from those of most of their victims. Investors are generally solicited from states apart from where the fraudsters reside, and this approach creates enormous problems for law enforcement authorities in prosecuting cases of securities fraud.

The State of New York attempted to close that loophole in its Enterprise Corruption Act by empowering the State Attorney General to prosecute cases of fraud committed within its jurisdiction even when the victims of the scheme have their primary dwellings outside the State of New York.

But getting victims to testify against fraudsters when the victims are hundreds, and in some cases, thousands of miles away from the prosecuting jurisdiction has accounted for many of the "decline prosecution" cases of securities fraud on Wall Street, as some of the prosecutors indicated to me during our informal discussions. Serious prosecution of fraud cases is further hampered because the character of securities enforcement by the SEC is civil, whereas the agency's requests for criminal indictments are subject to suppression hearings at grand juries and it must prove its allegations beyond a reasonable doubt before its complaints are handled criminally by the Justice Department. The agency's discretion is limited by the nature of the laws it enforces- and this is true of all government agencies- and by the organisation of the spheres of the social life, which it polices.

The success of the SEC and criminal justice agencies is further hindered by their relationship with the prestigious securities law violators, by resource constraints, and by the structure of intelligence gathering through which violations are detected. If you put all of these factors together, it becomes apparent that certain securities frauds that are executed in the course of legitimate business transactions are simply too costly to prosecute unless they create an egregious public scandal. Hence a majority of stock fraud cases are dismissed for no other reason than the so-called "interests of justice". The capacity of prosecutors and judges to exercise broad discretion in prosecuting and adjudicating cases is enormous. This selective discretionary power vested in criminal justice professionals tends to favour white-collar criminals because under federal sentencing guidelines and the New York State Criminal Procedure Law, all categories of violent crimes have a specific range of mandatory minimum/maximum sentences that judges are mandated to impose without discretion, upon the conviction of the defendant. But securities fraud, even under the revised Sentencing Commission Guidelines of 2003, does not stipulate a mandatory and non-discretionary minimum/maximum sentencing range. Of the one hundred and sixteen cases that I examined for this project, less than 15% received more than a one-year prison term.

Under the United States legal system, defendants can either opt for a bench trial or trial by a 12-member jury of their peers. Many of the defence attorneys with whom I discussed this project told me that most securities fraud cases are prosecuted in a bench trial due to their suspicion of jury prejudice in high profile cases involving large sums of money. (They believe that they have a better chance of avoiding conviction before a detail-minded judge than before the jury: and in the US, the prospect of bench trials would make prosecutors more cautious.) A county District Attorney that I interviewed for this project told me that because of budget constraints, he was forced to devote more resources to prosecuting violent felons. The variance of opinion between experienced fraud investigators and the priorities of the District Attorney are in part motivated by public opinion and political aspirations of the District Attorney. "How can I justify putting 30 Assistant District Attorneys in my fraud squad at a time when rape and domestic incidents were front page news in my borough?" he asked rhetorically. With that, he defined what criminal offences take precedence or are rated as high priority and focus in the crime control process in that county. These are some of the challenges faced by law enforcement agencies in their effort to detect, investigate and combat securities fraud on Wall Street.

The institutional and personal rivalry between prosecutors and law enforcement personnel and resource constraints also serve as hindrances to the detection process, and help explain why fewer fraud cases make it through grand jury hearings.

As a consequence of having fewer prosecutors in the fraud squad, many fraud cases were either classified as "declined prosecution" or took longer to go to trial. Police arrest for fraud also declined because fraud investigators were less zealous at "getting to the bottom" of the cases, as a veteran detective told me. From these findings, there is little evidence to suggest that government intervention is having a significant effect on reducing incidents and opportunities for fraud in the stock market.

MICHAEL MILKEN AND THE JUNK BOND MARKET

Michael Milken joined what was then called Drexel Harriman Ripley, a Wall Street investment firm in 1970 (Rosoff, Pontell, and Tillman 2002). At the time, most of the bonds being traded on Wall Street were investment-grade bonds with very high ratings. Investment-grade bonds were risk-free for the most part, but their annual yields were about the same as U.S. Treasury bonds, which had an annual return of less than 2 percent at the time. Milken, not particularly impressed by the low yield bonds, soon became interested in sub-investment-grade; deep discount bonds, with very low ratings. Many of these bonds, later called "junk bonds" were issued by little known companies with hardly any earnings reports. With an initial capital of $2 million, Milken entered the junk bond market in 1973, and less than a year later, transformed junk bonds into a profit making investment.

One of the main aspects of a junk bond was that it enabled corporations to make acquisitions, even if the firm had little or no assets. In 1977, Milken and his team began underwriting new issues of high yield bonds from heavily leveraged companies and marketed them directly to the public. The public, unaware that the annual returns that Drexel and Milken posted were manipulated, began trading in junk bonds with increasing regularity. As more and more investors put their money into junk bonds, the interest of government and enforcement agencies began to be aroused. Shortly after regulators began taking a closer look at the junk bond market, it became apparent that Milken and his firm had been swindling investors for over ten years, leaving them with worthless pieces of paper.

In January 1988, the government began a full-scale investigation of Milken, and by September 1988, several of Drexel's employees and agents began cooperating with the government in exchange for immunity from prosecution. Two months later, federal racketeering charges under the RICO Statute were filed against Milken. On March 29, 1989, he was indicted by a federal grand jury on 98 felony counts for fraud and RICO charges. Six months later, Drexel, having paid out $650 million to the government following a plea-bargain arrangement, filed for bankruptcy. The junk bond market collapsed less than three days after Drexel filed for bankruptcy.

On November 21, 1990, Milken pled guilty to six counts of racketeering, paid a $600 million fine, and received a 10-year prison sentence. Milken's sentence was later commuted to 2 years, leading to his parole in 1993. He was, however, permanently banned from holding a securities license or trading in securities as a consultant. At Milken's sentencing hearing in 1990, Federal Judge Kimba Wood noted that a decade of insider trading, corporate raiding, and market manipulation, involving people like Dennis Levine, Ivan Boesky, Martin Siegel, and Charles Keating had hurt the confidence of individual investors upon whom the American Economy ultimately depends (NY Times, November 22nd, 1990: A26.). However, what evidence she had in coming to that conclusion remains unknown.

INTERFACE OF UPPERWORLD AND THE UNDERGROUND ECONOMY

Many entrepreneurs know that the continual survival of their businesses depends to a great extent on their ability to create new markets, develop new clients, and expand their activities. Some organised crime figures are also aware of these economic principles and began crafting relationships with people in the legitimate sector in an effort to diversify their ventures. Some of these relationships between traditional organised crime and Wall Street professionals were developed at casino and gambling locations primarily in New York, New Jersey and Connecticut, and at other cities throughout the country. For organised crime members, their connection with Wall Street insiders translated into access that by the late 1950s boiler-room operations with organised crime players posing as Wall Street traders were beginning to surface on John Street in Lower Manhattan, only a few blocks from Wall Street. A decade later, organised crime involvement on Wall Street received national attention with the formation of the President's Commission on Organised Crime in 1963.

The connection between organised crime and the legitimate sector is critical to the continued survival of organised crime for several reasons:

1. The stock market provides a means to conceal other illegal activities.
2. The stock market provides a means to launder profits from criminal activities.
3. Investment in the stock market provides a source of legitimate and reportable income, but if they run scams, this generates unlaundered crime proceeds which have then to be laundered unless they are distributed for current expenses and lifestyle.
4. The stock market could serve as a means to foster better integration between organised crime and the legitimate business community.
5. The stock market provides stable and relatively safe operational opportunities, since non-white-collar crimes present a greater risk of detection and incarceration than securities fraud in the quest for accumulation of illicit capital (statement of an organised crime subject during an interrogation by Sergeant Robert of OCID in March 2000.)
6. The stock market provides a stable source of income to organised crime groups who generated a total of three hundred and eighty-eight million, three hundred and thirty-five thousand dollars ($388,335,000.00) from the 116 cases discussed in this study. The actual amount generated annually from stock-related scams by organised crime groups is difficult to estimate. These are some of the preconditions that attracted New York's organised crime families to infiltrate the securities industry at this particular time in their history. But how did traditional organised crime groups

acquire the skills that are needed in perpetrating this form of white-collar crime? Traditional organised crime families in New York lacked the skills that are needed for successful stock schemes on Wall Street.

It is for these reasons that a relationship between organised crime and Wall Street insiders is indispensable, since they do not have the skills needed to qualify as a stock trader.

At the minimum, stock traders and professionals on Wall Street are required to pass a series of licensing examinations. Many are college graduates, while others hold graduate degrees in accounting, finance and business administration. According to an investigator assigned to the Broadway, Manhattan office of the New York State Attorney-General office "to these professionals, the stock market and stock trading is both a calling and a vocation, and the opportunities to make fast money on Wall Street are simply additional perks that the "job" provides. These opportunities are not viewed as criminal opportunities. Insider tips are seen as clever intelligence gathering and shared or cross-utilization of resources that the work place provides for the benefit of the workers." Organised crime only plays a peripheral role in securities schemes, since most of the key players with the skills, access, and means to fraud schemes may not be "made" members of any of the crime families. Thus an alliance with corrupt players in a legitimate sector, such as the stock markets, may be rewarding to both sides.

The stock market is also attractive to fraudsters due to its vulnerability to manipulation, since transactions are arranged and executed with a click of the mouse. Many of the scrap pieces of paper on which deals are recorded can often be discarded before final entries are entered into permanent financial tracking records.

These processes create enormous opportunities for fraudsters and opportunity seekers on Wall Street. These are additional incentives that led traditional organised crime to the stock market. Expansion into this market is therefore born out of a rational choice. Organised crime, conversant with the sharp distinctions between stipulated penalties for white-collar and interpersonal crimes, began moving in on the legitimate market about five decades ago, in some cases, on the advice of their attorneys, according to records available at the NYPD's Organised Crime Investigation Division. Several of the detectives assigned to our department's Organised Crime Investigation Division situate the entry of organised crime on Wall Street in the late 1950s. According to department records that I examined, the investigation into organised crimes involvement on Wall Street began showing up frequently in 1951. Since then, their activities within the stock market have continued to rise, and will continue to do so until the weaknesses of the surveillance systems, especially in the over-the-counter-market, and deterrence processes are adequately addressed.

THE SEARCH FOR CLEANER SOURCES OF INCOME

The result of this study, as shown in table 2 and figure 2 below, suggests that the younger generations of organised criminals prefer Wall Street swindles to street crimes because the complexity of the financial industry and the limited role of enforcement agencies in this sector of the economy make detection, prosecution and conviction difficult. The organised crime-controlled brokers in this study used their community and professional credibility and respectability to deceive family members, friends, business colleagues, and other members of the community with whom they had formed a relationship. The financial loss that victims of securities fraud suffer greatly exceeds their loss from many other forms of interpersonal crimes. Yet many are less inclined to see white-collar criminals as a serious menace to society, even when the fraudsters have verified connections with traditional organised crime. The securities market where skilful criminals are viewed as successful entrepreneurs therefore becomes a fruitful breeding ground for young and aspiring future swindlers.

An intercept of a telephone conversation between two members of the Colombo crime family suggests that as enforcement efforts against organised crime intensified, and the older organised crime leadership were being incarcerated, the new leadership became less interested in what they came to see as the high-risk aspect of the criminal enterprise and less inclined to resort to violence to maintain internal and external market control. Though we cannot yet know what will happen as today's younger criminals "mature", the table on age distribution of organised crime members (20-45 young, 46-59 middle age, and 60-plus old) though statistically insignificant, shows that the new leadership had an increasing interest in going the way of what they presumably saw as corrupt corporate America (Albanese 1982), though there was less public evidence of that corruption then than there is today. As shown by table 2 below, 23.5% of the younger generation of organised crime members were charged for securities violations, while only 11.8% of the same age group committed interpersonal crimes (by crime categories, 57.1% of younger organised crime members committed securities fraud whereas 42.9% of the members within this age group committed interpersonal crimes). 26.5% of the middle aged members of organised crime were charged for securities violations, while 19.6% of the same age group committed interpersonal crimes (by crime categories, 47.4% of middle aged members of organised crime committed securities fraud whereas 52.6% of this group committed interpersonal crimes). As the data suggest, 50% of the older members of organised crime were charged for securities violations, while 68.6% of the same age group committed interpersonal crimes (by crime categories, 32.7% of older organised crime members committed securities fraud whereas 67.3% committed interpersonal crimes). However, the study was inconclusive in answering research question number three, which aimed to determine if organised crime involvement in inter-personal crimes may decrease as more and more income is generated from securities fraud, since there was insufficient data to confirm or refute such claim.

Table 2: Cross-tabulation: Offence Type by Age of offender

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
offence type * age	85	73.3%	31	26.7%	116	100.0%

offence type * age Crosstabulation

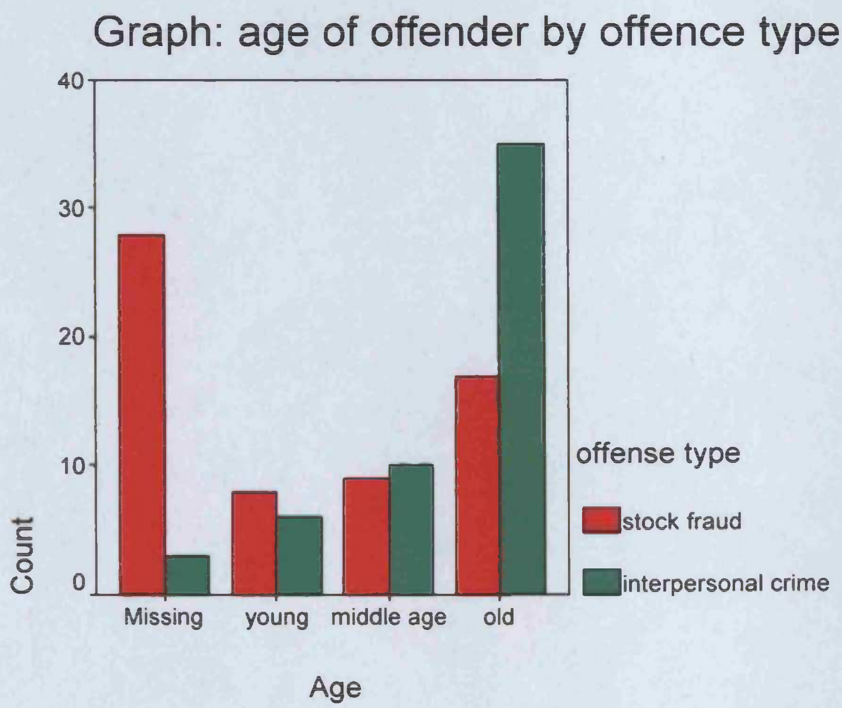
			age			Total
			young	middle age	old	
offence type	stock fraud	Count	8	9	17	34
		% within offence type	23.5%	26.5%	50.0%	100.0%
		% within age	57.1%	47.4%	32.7%	40.0%
	interpersonal crime	Count	6	10	35	51
		% within offence type	11.8%	19.6%	68.6%	100.0%
		% within age	42.9%	52.6%	67.3%	60.0%
Total		Count	14	19	52	85
		% within offence type	16.5%	22.4%	61.2%	100.0%
		% within age	100.0%	100.0%	100.0%	100.0%

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	3.301[a]	2	.192
Likelihood Ratio	3.278	2	.194
Linear-by-Linear Association	3.229	1	.072
N of Valid Cases	85		

a. 0 cells (.0%) have expected count less than 5. The minimum expected count is 5.60.

Figure 2



Shaw and McKay (1972:142) observed that "The successive changes in composition of population, the disintegration of the alien cultures, the diffusion of divergent cultural standards, and the gradual industrialization of the area have resulted in dissolution of the neighbourhood culture and organization. The continuity of conventional neighborhood as a unit of control and as a medium for transmission of the moral standards of society is greatly diminished. The boy who grows up in this area has little access to the cultural heritage of conventional society. For the most part, the organization of his behaviour takes place through his participation in the spontaneous playgroups and organized gangs with which he has contact outside of the home. This area is an especially favorable habitat for the development of boy's gangs and organized criminal groups." In traditional organised crime families, on the other hand, socialization into a life of crime is done at home and in social gatherings with other members of the crime family, and their activities are confined to a specific geographic location.

But the global nature of stock trading creates enormous opportunities that fascinate the younger generation of organised criminals. As we will see in the next chapter, the globalization of financial transactions has been accompanied by large-scale international financial frauds. The perpetrators of these emerging fraud schemes do not see themselves as criminals, but as skilful entrepreneurs who turn loopholes and opportunities in the financial market into fortunes. Recent intelligence reports from field investigators also point to a change of strategic direction of younger organised crime members into the mortgage industry. Although the expansion of traditional organised crime into the financial sector requires the creation of collaborative networks with other ethnic groups and the integration of skills, this trend appears to be the direction of some younger members of traditional organised crime families who are looking for cleaner and less violent means to generate income without risking significant jail terms. The missing Dom Cirillo Jr., the eldest son of Dominick Cirillo, the acting head of the Genovese crime family was hated by his father because he concentrated the efforts of his crew members on Wall Street, and refused to be involved in drug distribution. One of the keys to the survival of an organised crime family is the ability to maintain the income flow for the whole family by keeping the "soldiers" engaged in a variety of schemes. Today, traditional organised crime families in New York are faced with the challenge of internal management, management of succession, and fracturing of loyalty. These challenges will exert negative impacts on the ability of traditional organised to continually generate sustainable income.

Confidential records on the profile of organised crime members maintained in the Organised Crime Investigation Division show that only two out of the 19 "soldiers" who make up the "Dom's Crew" were college-educated. The rest of his crew members were ill-equipped in socio-educational skills for Wall Street scams. The criminal skills of a vast majority of his crew members can hardly be transferred from drug distribution and extortion to executing fraudulent trades on Wall Street. Law enforcement personnel investigating his disappearance speculate that his focus on Wall Street scam may have had something to do with his disappearance. Dom Cirillo Jr., has been missing since April 2004 after a meeting on City Island in New York, with Vincent Basciano Jr., the 40-year-old son of the new head of the Bonanno Crime family, where they were discussing stock and real estate deals. Prior to his disappearance, Dom Cirillo Jr. told a cooperating informant in December 2003, that he and fifteen other associates within his age group from all of the other New York's crime families prefer stock schemes to violence- prone drug rackets.

He also indicated to the informant on the secretly recorded taped conversation that the jury will be more lenient if he is charged with securities violations as opposed to an indictment for a homicide that had to be ordered to "regain control of a family turf" in the Bushwick section of Brooklyn, New York. Securities fraud is likely to remain a rational crime of choice for future generations of younger organised criminals. Though not approving the rational choice model in its totality, Garland (2001:130) has noted that "where correctional criminology took criminal conduct to be a product of social influences and psychological conflicts, and regarded the criminal as a deep subject, not altogether in control of his or her behaviour, the rational choice model regards criminal acts as calculated, utility maximising conduct, resulting from a straightforward process of individual choice. This model represents the problem of crime as a matter of supply and demand, with punishment operating as a price mechanism."

MOTIVATIONS OF SECURITIES FRAUDSTERS

Criticisms of the situational crime prevention perspective have typically concerned target hardening aspects of opportunity reduction. Such measures tend to be narrow and simplistic responses to crime that do not adequately consider the motivation of traditional organised crime fraudsters. Economic motivations and choices in late modernity take many forms. Investing in the stock market for handsome returns is simply one of those choices. The stock market is especially appetizing because it is a bigger pie that is capable of satisfying the greed of both wholly illegitimate enterprises and the major corporations and legitimate financial experts who commit most of the stock frauds on Wall Street.

An informant who serves in the role of an enforcer for the Bonanno crime family indicated to one of my colleagues that organised crime also came to realize that while their members were frequently receiving long sentences for inter-personal crimes, punishment for securities fraud was quite rare. A single case of corporate fraud on Wall Street like the Milken, Boesky, cases of the early 1990s, and the more recent Enron, ImClone and WorldCom schemes involved billions of dollars in losses to investors, but enormous benefit to a few of the major actors. The enormity of the amount involved in these stock schemes not withstanding, most securities fraud cases are prosecuted as civil wrongs for which only a fine is imposed. Organised crime members are aware that there is concurrent jurisdiction in white-collar crime cases, whereas interpersonal and street crimes are tried only in criminal courts, with only criminal sanctions as the remedy for the offence.

Securities fraud induces a calculating mentality in which costs and benefits of the schemes are weighed. The relatively high yield and low risk associated with stock swindles is more often than not calculated as worth the risk. This explains why even the SEC (Annual Report 2001) concedes that there appears to be a steady rise annually in reported and detected cases of securities fraud, but such claims are also a way of reinforcing claims for more resources. The absence of severe government controls at the judicial level, the difficulty of getting capable personnel at the SEC, the ease with which stock fraud can be executed, and the potential of the stock market to produce rather significant rewards helped to lure some illegitimate firms with ties to organised crime into Wall Street. Weisburd (1997) noted that crime occurs when motivated offenders, suitable targets, and absence of guardianship converge: all of these factors combined could lead to more incidents of crime. The criminal justice system, overburdened and overloaded is incapable of controlling organised (or indeed, any other type of) crime due to these inherent structural limitations.

GOVERNMENT POLICY TOWARD SECURITIES FRAUD

Decades of research on arrest patterns have documented the fact that the majority of those arrested for law violations are drawn from the lower end of the social class structure (Sutherland and Cressey 1974: 51). This has always been the case. Criminological work has broadly confirmed that this reflects juvenile and young adult crime patterns also. By contrast, white-collar crime has always been viewed as predominantly an upper and middle-class crime. For the most part, the securities schemers that I examined in this study were engaged in gainful employment, and many of them were high-income earners, except for "made" members of the New York's crime families. The socio-economic status of white-collar offenders might influence a prosecutor's decision to handle a case either as a criminal offence, or as a civil wrong, though see Katz (1979) and Benson and Cullen (1998) for a more refined analysis.

McIntyre (1991) has argued that the effect of the political philosophies of de-regulation on American financial institutions led to the removal of restrictions on what firms could do, whether in terms of off-balance sheet reporting on how they could invest. The significantly reduced presence of government regulatory agencies in the financial sector provided for a "feeding frenzy" that was fuelled by culturally sanctioned greed, stimulating financial fraud, including saving and loans schemes, corporate frauds, financial engineering and other elite Wall Street scams. Huge campaign contributions and political corruption have the potential of blurring the distinction between the corporate lawbreaker and enforcement personnel charged with enforcing securities laws, and may also play a role in securities fraud.

Corruption, either in the form of regulatory capture or outright bribery or both, has always been part of the vast social system that is structured by interaction among members of society, particularly those interactions or contracts that recur with some degree of regularity. Corruption has become almost synonymous with government and big businesses. This has been documented by the series of scandals involving government officials over several decades (Shelden 1982).

One central idea of labelling theory is that people of higher social and financial status are more able to control what is labelled as deviance, so they are better able to avoid this label. A securities fraudster seldom sees himself or herself as criminal and often succeeds in convincing others, including some of those agents working within the criminal justice system that the offence is not too serious. Thus, to take a simple (and perhaps simplistic) contrast, most of the Baron fraudsters who swindled investors of over $75 million were sentenced to probation, while a lady whom I arrested for shoplifting was given nine months in jail, even though this was her first offence and the value of the merchandise was about $1,250.

Many studies on criminality focus primarily on crimes committed by the underclass (Levi 1993a), leaving the vast majority of white-collar crimes untouched and unexplored. Between October 2001 and July 2002, the stock market in the United States lost more than 5% of its total market value as investors re-directed their investments, primarily due to loss of confidence in the future of the stock market, fear of fall in stock value, corporate scandals, accounting fraud and questionable bankruptcies by major corporations. Offence seriousness is measured in the US typically by the severity of the victim's physical injury (Dawson and Dinovitzer 2002), and not by the enormity of the financial loss (though the latter does increase penalty severity under Sentencing Guidelines). However, the SEC, under then chairman Harvey Pitt, in response to the wave of corporate scandals on Wall Street, adopted rules forcing companies and their executives to file financial reports faster and swear to their accuracy.

The revised provisions, which were approved by all the 5-member SEC board on Tuesday, August 27, 2002, shortened the deadlines for quarterly profit reports from 45 days to 35 days and for annual reports from 90 days to 60 days. Executives now have to report their own selling of company stocks within two days. The rules apply to firms whose stocks have a market value of $75 million or more, including foreign companies. The revised 2002 SEC rules gives executives up to 40 days to report selling their shares on the public market. If executives sell shares back to their company, they can wait until 45 days after close of the fiscal year to declare their actions. Former Enron CEO Kenneth Lay sold $70 million worth of his Enron stock back to the company in 2001 after hearing about the firm's accounting problem. But under the previous rule, neither Enron nor Mr. Lay was required to disclose the transaction until February 2002. The new rule took effect in December 2002, and is to be completely phased in over the next three years. (Daily News, Wednesday, August 28, 2002, page 53). Most of the actors and key players in the Enron scam have now been officially charged or indicted. The aim of these reforms and of the Sarbanes-Oxley Act was to reduce risks and scale of harm (and to defuse political damage). However what impact they have on the lower end of the securities fraud market is doubtful.

Levi (1996:319) argued that "there is an obvious conflict between the universalistic claims of law as a "politics-free zone" and the fact that due to scarcity of resources and differential vulnerability to exposure, discretionary enforcement is inevitable and logically entails prioritisation of the seriousness as well as solvability of different crimes."

On Tuesday, July 30, 2002, during the signing ceremony of what was called a tougher law on executive and corporate fraudsters, President Bush said " No more easy money for corporate criminals, just hard times. The era of low standards and false profits is over" (Blomquist and Orin 2002). With these statements, he acknowledged that weak and ineffective controls have helped corporate pirates on Wall Street. The bill includes a 10-year prison terms for executives who shred key documents. The new Sentencing Commission Guidelines also changed the existing law by restricting accounting firms from providing certain consulting services. This is one of the major steps the government have taken in dealing with scams on Wall Street since the Enron, WorldCom and other corporate scams on Wall Street unravelled in 2001.

Proponents of the bill said it was aimed at preventing the conflict of interest issues that got Arthur Anderson into trouble for its works on behalf of Enron. But some critics in Congress argued that it was a politically motivated and toothless legislation designed to stem the erosion of investors' confidence in the stock market.

Government policy does play a significant role in the way business is conducted in the financial sector, and the dynamics of market transactions do in fact create loopholes for fraud. These loopholes do in fact influence the decision of offenders working in legitimate firms as well as the motivations of fraudsters connected to organised crime groups on Wall Street.

PATHWAY OF ORGANISED CRIME TO SECURITIES FRAUD: EXPANSION OR DIVERSION?

The increasing presence of organised crime on Wall Street can be attributed to the convergence of motivation and opportunity for securities fraud (Land and Felson, 1976). Following his extensive research on white-collar crime, Levi (1996:323) observed that "in many though not all countries, legislation to combat insider-trading, money laundering, and serious fraud has been enacted during the 1980s and 1990s, to reflect concern about organised and white-collar crime." But "these have been drugs-led only in part." As traditional markets consisting primarily of drugs, prostitution and gambling began to shrink, organised crime looked to other avenues or "hot spots" for new markets (Sherman and Weisburd, 1995). The laws designed to combat illegal drug distribution may be connected to the spread of non-drug criminal activities. Competition and sometimes displacement from other illegal markets also helped to facilitate their search for capital in other ventures.

Organised crime was also influenced by the way criminal justice agencies prosecute certain crimes and by the variation in the severity of sanctions that are imposed on different type of criminal ventures. In an article on New York Mob families that was published in the New York Times on March 9th, 2001, the New York State Attorney-General said "We have seen over the years the migration of organised crime from areas where for years we prosecuted them-loan sharking, drugs and prostitution. Now we are seeing organised crime's tentacles in Wall Street, and in health care." In another work on "Corruption Legislation and Socio-Economic Change in the People's Republic of China" Levi and Fangmin (1996) observed that decades of political corruption and moral decay have also contributed to the increasing focus of organised criminals on white-collar crime there. Organised crime expansion into Wall Street came as these offenders made an analysis of the costs and benefits of stock fraud. They were presumably in part motivated by the reward in relation to the punishment. Securities fraudsters have the same concerns and face the same challenges that other criminals encounter. Their primary concern when caught is the avoidance of jail. For example, the maximum fine that the SEC could impose on any individual is $1,000,000 or imprisonment for 10 years or both, even when "the take" is a hundred fold more than the fine. If the violator can prove that he was unaware of the rule or regulation that was violated, then only a fine and not imprisonment can be imposed as penalty. For a corporation, the maximum fine that can be imposed by the SEC is $2,500,000 for each violation. Such trading loopholes and exemptions in the Securities Acts of 1933 and 1934 constitute means by which fraudsters can get out of regulatory provisions that would have reduced opportunities for fraud on Wall Street, however, civil sanctions under the civil RICO and ordinary civil litigation can serve as additional disincentives against fraudulent stock schemes.

To commit stock fraud, the weapon of choice is not a gun, but slick publications, marketing materials, prospectuses, computer and communications technology, and well-rehearsed sales pitches. Thus determining the scope and extent of particular defendants' involvement in securities scams is a daunting challenge that no particular criminal justice agency has been able to overcome.

DRIFTERS VERSUS CAREER CRIMINALS

One of the more notable characteristics that criminologists use to differentiate career criminals from drifters is the role of criminal activity in the offender's life. Is the offender a full-time criminal, a person for whom crime is the primary means of support, an offender who spends much of his or her waking time planning or carrying out criminal activity? Or is the offender a part-time criminal, a person for whom crime provides a financial supplement to regular or irregular employment?

Some securities fraudsters are occasional criminals working in legitimate Wall Street firms, while others are professional con artists entering the market with the sole aim of executing fraud schemes with a well-planned and well thought-out plan of action.

Some of the accountants, physicians, lawyers, sports figures and movie stars that were questioned in the WorldCom, Enron, and ImClone sagas were occasional criminals who saw the opportunity to make some quick money on Wall Street and took advantage of it. Some of them eventually cooperated with investigators in exchange for leniency. For many of them, securities fraud is not a primary source of income and is incidental to their way of life (Clinard and Quinney 1967:90). Their occasional involvement on Wall Street schemes were rationalized by claiming that "everybody eats a little piece of the Wall Street pie" as one of them said in his guilty plea to a prosecutor in the New York State Attorney-General's office.

The majority of these occasional fraudsters held prestigious and enviable positions in society. Clinard and Quinney (1967: 94) once submitted that, "a career in crime involves a life organization of roles built around criminal activities, which include identification with crime, a conception of the self as a criminal, and extensive association with other criminals. In career crime, there is a progression in crime which include the acquisition of more complex techniques, more frequent offences, and, ultimately, dependency on crime as partial or sole means of livelihood." This observation accurately describes the organised crime members who discovered Wall Street as an additional business opportunity that held great promises for crime enterprises that were seeing a continual decline in some previously lucrative criminal markets.

In "The Fountain Pen Conspiracy", Kwitny (1973:3) noted that through securities trading "the ancient art of swindling entered a new phase. Clever confidence men abandoned the traditional penny-ante deceits and began exploring the intricacies of corporate mergers, insurance trusts, banking transactions and the stock market." The greed of risky investors has also helped to create a boom in securities fraud. Exaggerated advertising about the return prospect of marginal stocks also helped to swell the expectation of otherwise sophisticated investors, turning them into suitable targets of securities schemers. Mr. P.G.M, a major organised crime player that I interviewed told me in response to one of my questions that the strongest tool of a securities swindler is "the lure of riches that brought the victim to the investing world in the first place." According to him, some of these swindlers on Wall Street operated from rented offices, as well as impressive suites equipped with dozens of telephone lines and computer terminals. With these elaborate networks, a stock scheme that was initiated in New York on a trading day can be executed in markets throughout the United States, Europe and Asia on the same day with remarkable efficiency. And it is hard for investors to know whether they are going to be lucky or going to be victims.

As mentioned earlier, securities fraudsters are particularly impressed with over-the-counter stocks. These are the issues that do not trade on an organised exchange. Since daily newspapers do not list the prices of most over-the-counter-stocks, investors follow current prices through a system that relies on the broker-dealers. Interview of two members of traditional Italian-American crime families showed that organised crime families on Wall Street either plant their own broker-dealers or employ the services of corrupt broker-dealers to manipulate the prices of these vulnerable stocks. The National Daily Quotation Service publishes these prices every day in a thick pad that is made available only to subscribing brokers and dealers. The price lists, which are known in the securities industries as the "Pink Sheets" contain prices reported by stockbrokers who act as market markers for a particular stock. Once the price is known, the organised crime controlled brokers can then manipulate the bid-ask spread using the law of supply and demand. They do so by calling their clients to authorise a market order. A market order authorises a broker to execute a transaction on behalf of the investor. Market orders do not specify a price at which orders should be executed. As soon as the market order is authorised, the broker places a bid at the lower end of the spread, purchases the stock at the lower going rate, and then sells it to the investor at the higher end of the spread. If the price of the stock falls toward the closing of the trading day, the broker, armed with an open market order, can short-sell the stock at the investor's expense. Organised crime also influences the market through the publication of promotional brochures to push specific stocks to customers and potential investors.

The increasing opportunities for stock fraud on Wall Street tend to increase the motivation of securities fraudsters to execute fraudulent schemes within the market-a somewhat reversed economic principle where supply influences demand (Becker 1986; Blockand Heineke 1975; Cornish and Clarke 1986; Agnew 1992; and Messner and Rosenfeld 1994). Investors are suitable targets due to absence of effective controls. A less sophisticated floor broker on Wall Street may swindle any vulnerable investor that comes up first. However, stock specialists will be more interested in defrauding large clearing houses with huge volumes and high volatility ratio, and those firms whose stocks are heavily traded, because it is a lot more difficult for the indicators on the trading tape (software) that monitors trading activities to pick up fraudulent transactions (without purchase and sale orders from clients) in heavily traded stocks that have a high volatility ratio. Also, the economic impact of such occasional schemes by floor brokers and stock specialists on large trading houses and major institutional investors is less severe than on individual investors.

In April 2002, the New York Attorney General disclosed a 10-month investigation that alleged Merrill Lynch analysts were paid to help lure investment-banking clients with excessively favourable stock ratings. Citing company e-mail messages in which some stocks were called "powder kegs" and "pieces of junk" but nonetheless recommended to investors as suitable stocks with great return potentials. Merrill Lynch, whose actions were referred to by Elliot Spitzer, the Attorney General as a "shocking betrayal of trust" apologized and agreed to pay $100 million in fine (Dillon 2002). On August 28, 2002, federal authorities indicted WorldCom executives for a $9.1 billion accounting fraud that was one of the largest accounting frauds on Wall Street (Claffey 2002). The prosecutors anticipated that some of the principals in the WorldCom case will simply plead guilty for a reduced penalty just before a trial to protect their loot from a forfeiture proceeding at the penalty phase following a jury conviction. On September 26th, 2002, Mr. David Myers, WorldCom's former Senior Vice-President Controller became the firm's first former executive to plead guilty to fraud in relation to WorldCom's securities and accounting scandal (Accountancyage.com 2002). Also charged with Mr. Myers were Mr. Bernie Ebbers, the former Chief Executive Officer of WorldCom, Mr. Scott Sullivan, the Chief Financial Officer and Mr. Buford Yates, one of the firm's Vice Presidents. (Their trial started January 2005.) On June 9, 2003, it was reported that four other former WorldCom employees have also pled guilty to fraud (Accountancyage.com 2003). Unlike money laundering schemes where middlemen and agents are employed to shield the key offenders, in securities fraud cases, the ultimate actors are often the key offenders, with very few intermediaries.

MODUS OPERANDI OF STOCK SCHEMERS

In a classic investment scheme, the con artist files a registration statement with the SEC of an initial public offering. Once the registration statement is approved, the schemer then sends out a prospectus to potential investors with a copy of the SEC approval seal. The booklet foretells of potential wealth and solidifies the claim with the names of prominent and well-established corporations, sophisticated investors, and respected large fund managers who have subscribed to the new offerings. Many of the investors in the cases that are discussed in this project were soon to learn that they were holding worthless pieces of paper having been conned into phony investment contracts.

The key responsibility of a market maker is to post continuous, two-sided quotes (bid and ask), which consist of a price and a size. These quotes are supposed to be firm or constant during the trading day. But some of the scams that are discussed in this study involve the presentation of a one-sided quote to the investor. In some cases, the scams involve a short sale for an account of a customer, at a price below the current inside bid. Some of the schemes were carried out through a system of reciprocal order-routing arrangements. The most common form of inducement present in the securities market today is "swapping" of order flow, or reciprocity. For example, when executing a trade, Firm A will send Firm B orders for execution in stocks in which Firm B makes a market, if Firm B will reciprocate and send Firm A orders for stocks in which Firm A makes a market. Market-making firms may even use automated systems to accomplish the swapping arrangements that were discussed in bars and social gatherings in New York City. An options market maker desiring access to a specialist in underlying stocks may promise order flow or reduce transactions charges to the equity market maker. In return, the equity market maker or specialist is assured special access to the options market maker for transactions in their products. This is one of the classic modus operandi employed by brokers on Wall Street to fleece investors of millions of dollars. This type of illegal swapping arrangement is important because not only does it complicate the paper trail and investigative process, the scheme also enables the parties involved to access and benefit from securities for which they have no fiduciary responsibility. Those types of schemes and arrangements are not confined to the New York's financial district. The same scamming technique is applied in stock exchanges and trading networks throughout the country at the detriment of both sophisticated and unsophisticated investors. For the most part, these brokers were motivated by excessive and ill-disciplined greed. Interface with traditional members of organised crime for joint stock schemes, especially with new initial public offerings, occurred as relationships were formed, sometimes in non-conventional settings. In order to keep the price of initial public offerings at artificially high levels, brokers used a variety of fraudulent sales techniques, including making unauthorized trades to bilked investors. In the D.H. Blair stock cases, which is further discussed in chapter five, the Manhattan District Attorney charged a broker with making unauthorised transactions in a client's account while the client was in a coma in a Michigan hospital (Celona and Gregorian, 2000).

Mr A.K and Mr. A. F., the two Russian organised crime members that I initially interviewed in 1999, with a follow-up interview in 2002 told me during my interviews with them that in terms of organisation, organised crime syndicates in New York adopt four uniquely distinct modus operandi in conducting activities on Wall Street. The primary method is through the formation of sham, fictitious and non-existent brokerages with their Russian counterparts. These boiler-rooms operate for an average of seven months before dumping the worthless stocks on their victims. The Commission case that is discussed in the next chapter was organised around this scheme.

The second approach that organised crime is applying to stock fraud on Wall Street is by investing heavily in the offerings of a particular brokerage firm with the goal of taking over control of the firm. The funds are dumped in the firm either through high interest loans to the firm's principals or by buying the firm's well performing house stocks until their financial interest either becomes significant or reaches the threshold that guarantees proprietary right to the firm. The Wakefield case, which will be analyzed in the next chapter, was carried out using this type of scam. Organised criminal groups are also penetrating Wall Street by enlisting the help of corrupt insiders who provide tips regarding initial public offerings, and classified disclosures of privileged information on pending mergers and acquisitions for a fee. The information is then utilized for maximization of benefit. The less frequently utilized method for penetrating Wall Street is through the use of confidential informants, associates and insiders with ties to organised crime for gathering intelligence on vulnerable firms and firms whose principals and representatives are corrupt. Once these firms that are prone to fraud have been identified, organised crime then approaches the firms for a joint partnership agreement. If the principals of those firms reject the offer, they are then threatened with violence, defamation and exposure. This is the hard tactics that was applied by organised crime in their penetration of the Baron Criminal Enterprise, a sham brokerage firm, which defrauded investors of 75 million dollars before its collapse in 1996. This case is discussed in great depth and detail in the next chapter. The first and second modus operandi are employed mainly by organised crime groups, while the third and last approach are utilised by both mob-related and non-mob affiliated scammers on Wall Street.

Common forms of manipulation are conducted through dissemination of rumours, tips, and the distribution of prospectus and letters with factual misrepresentations or omissions. Other forms of manipulation include illegal market devices such as matched orders by two people and pool activities by syndicated groups designed to raise or depress the price of a particular stock. Most of the manipulated stocks were the NASDAQ, Bulletin Board, and Pink-Sheet Stocks. The swindlers guaranteed executions at the National Best Bid or offer quoted price. They promised investors that all orders received at least five minutes before the market opens would be executed at the opening price. They then inflated the opening price, unload the stocks on their clients and purchase the same stocks later in the day from clients as the stock bottoms out at the close of market. The reverse is done for stocks that open at bear market rates and close as a bull market.

Stock swindlers and con men involved in confidence games have many similarities in the ways they operate. The con men, workings in concert with others seek out potential victims, based on the victims' character, lifestyle, and investment potential (Thomas 1974; Snyder 1986). The big con schemes, just like securities fraud, require considerable planning and time in order to beat a carefully selected wealthy victim. Some of the victims in the stock schemes that are discussed in this project were doctors, lawyers, and successful business people. Many of them failed to report that they were swindled either to avoid notoriety and shame or because of guilty feelings or because they probably used tax-evasion money. At least eight of the victims were unaware that they have been conned out of their investment until they read about the arrest of their brokers in the media. Levi (1998) argued that the organisation of long-firm fraud requires five components: finance, persons willing to participate in the crime, victims who have assets, skill levels appropriate to the complexity of the crime, and the ability to escape conviction. All of these elements were present in all the stock schemes that are discussed in great detail in the next chapter.

CONCLUSION

Trading in securities can be a trans-national activity (Williams and Savona, 1996), and it is slowly becoming a major problem in most countries where trading on organised exchanges and over-the-counter market is carried out. A total assessment of the scope of this problem is impossible at this time because it is difficult to find accurate data for reliable trans-national comparisons. But despite the mounting evidence for the prevalence of organised fraud in the securities market, and white-collar crime in general, there are relatively few analyses in mainstream criminological publications about this aspect of criminality, a fact that has changed little since (Levi 1987a) made this point. Criminal data provided by law enforcement agencies often neglect white-collar crimes since enforcement agencies are primarily focused on lower class offenders. Some researchers have argued that the scarcity of empirical works on white-collar crime can be attributed to the invisibility and complexity of white-collar offences (Levi 1987; Geis and Meier 1977). Researchers who aspire to explore this area of study also face several hurdles as stock-brokers and industry insiders may be unavailable for observation, unwilling to give interviews, and unlikely to answer questions (Geis and Meier 1977).

In securities fraud cases (as in many other criminal cases, but with more optimism about their prospects) many of the victims simply prefer recovery of their losses to putting the fraudsters in jail, partly since investors do not always define their experiences as criminal but probably mostly since they care more about reparation than about retribution and don't believe that they can have both. Others fail to report their experience to the authorities because they hold themselves responsible for their own victimization (Levi 1991).

As a first response, many of the swindled investors that I interviewed for this project attempted to recover their loss via negotiated agreements with the firm's principals through out-of-court settlements, instead of reporting the matter as a crime to enforcement authorities. (These victims were contacted after they filed complaints with our department). Victim cooperation and their willingness or reluctance to testify against the defendants also influences police and prosecutors decisions to charge and prosecute defendants, or the decision to void the arrest, and decline prosecution. Moreover, there appear to be few incentives for members of the securities trading community to communicate with the Securities and Exchange Commission, or any other regulatory or enforcement body, absent the aggrieved competitor, although they have regulations obliging them to make reports of fraud to the SEC.

The cardinal ingredients of any criminal deception are the ingenuity and plausibility of the story advanced, and the greed and gullibility of the intended victims. A number of factors make securities fraud an attractive mode of criminal activity to organised crime and professional thieves alike. Preparation and execution of securities schemes involve minimal risks, and it is relatively inexpensive, if the target is a stock of an emerging and non-Fortune 500 company. Several of these actual cases of securities fraud, obtained from local, state and federal criminal justice and regulatory agencies, and which were thoroughly examined by this researcher, are discussed in great depth in the next chapter.

CHAPTER FIVE

THE INFILTRATION OF WALL STREET BY ORGANISED CRIME

INTRODUCTION

This chapter details the extensive infiltration of organised crime groups into the securities market in New York with a fuller discussion on sensitive case studies and some of the key research data analysed throughout the work. The chapter concludes with a discussion on the similarities between organised crime related fraud and corporate scams, and how the subjects of this research recruited members for securities schemes.

Some of the cases that are further analysed in this chapter involve the use of cold-calling and churning against limit orders from investors. In one of the cases that will be further examined in this chapter, the mobsters, working with short-selling confederates, demanded payments from broker-dealers in return for not flipping or unloading the stocks issued by some penny-stock and micro-cap brokerages in which they had an interest.

Others involve insider trading of material non-public information of pending merger acquisitions and initial public offerings (IPO) by agents and brokers working for firms controlled by organised crime families. The different securities-related trading scams which include the fraudulent application of Regulation S, boxing, flipping, brokerage scams, hidden ownership, tributes, parking, price-fixing, extortion and other means used by organised crime to make money on Wall Street are also discussed in this chapter.

Organised crime on Wall Street, at its most basic level, is a product of overlapping and interrelated social relationships. Unlike traditional crimes such as gambling and extortion rackets, securities fraud is not generally executed by highly structured individuals or groups with close social ties. Levi (1981:54) has already found that "Large-scale long firms can be carried out by people who have no social or commercial contact with the underworld proper. For people such as these, the organisational and social setting of their frauds is identical with that of equivalent legitimate businesses, and provided that they are not caught, their crimes are in a sense private crimes." There are many similarities between the social and criminal organisation of long-firm fraud that Levi (1981) describes, and the modus operandi of securities fraudsters on Wall Street.

The data, interview notes and case studies on the influence of organised crime that are discussed in this chapter suggest that stock fraud is carried out by networks made up of business people, bureaucrats, criminal entrepreneurs, and members of traditional organised crime. Criminal networks are generally "common in work settings in which participants have some kind of common background, be it ethnic, geographic, ideological, or professional. The more homogeneous the group, the greater the trust, hence the easier to sustain network-like arrangements" (Powell 1990). In stock schemes, these networks transcend our general notion of the social organisation of a typical or traditional organised crime groups. These networks tend to be loosely structured, flexible, and highly adaptable (Levi 1981; and Chambliss 1978). In penny-stock swindles, according to Block and Griffin (2001), the contemporary penny-stock boiler room depends on a large workforce of telephone callers who are deliberately chosen for their lack of experience in, and knowledge of, the securities industry. It is the relentless pressure by stockbrokers on the cold-callers that is at the heart of the penny-stock swindle. Block and Griffin (2001) noted that the initial battle lines between regulators and fraudulent penny-stock dealers are drawn over the quality of and quantity of information. And when it was determined that the information was misleading, the penalties were routinely mild. They argued that swindlers who benefit from victimizing investors in the penny-stock world are correct in their belief that there are millions of people obsessed with making a fortune, and all that separates them from the loot are "some petty rules and regulations that have little teeth." If things get too hot, they have "house" lawyers whose speciality it is to stretch cases out for years. Such was the case with Robert E. Brennan, who managed to stay in business despite several indictments for securities violations, according to Block and Griffin (2001).

In a separate work on "Trans-national Financial Crime," Block and Griffin (2002) profiled a particularly notorious Bahamian Bank, Castle Bank and Trust, which was formed in Freeport, the Bahamas, on October 8, 1964, for the purpose of evading U.S. tax laws and laundering crime proceeds. Consistent with the network arrangements in securities schemes, this study describes the evolving network of corrupt lawyers who were associated with Castle Bank, and the penny-stock swindles executed by Randolph Pace and Kanter. The study also detailed the drug-money laundering done by Swiss American Bank entities, a Panamanian holding company.

All of the brokerage firms that are examined in this chapter were organised crime controlled brokerages that existed only for a brief period of time. Participation in the schemes that were executed by these firms was dictated by the intended result that the various groups wanted to accomplish. Unlike other traditional activities, in stock fraud, membership in these schemes was drawn from individuals of different ethnic orientation. One of the main reasons for the variation in the ethnic composition of securities fraudsters is the complexity of the skills that are required in executing securities fraud. Getting the right quality of staff from the Mob for complicated (some boiler room scams are not that complicated) financial transactions is a difficult challenge that can hardly be addressed without bringing experts from other ethnic groups, particularly Russians, because there are few Italian-American fraudsters, with or without a formal Mafia membership, on Wall Street. The impact and cost of inclusion on traditional Italian-American Mafia groups is the crumbling of moral ties and ethnic identification. Paoli (2003:98) notes that a significant portion of the new generation of Cosa Nostra members, "having grown up in a society that regards economic success as the basis of social reputation, subscribes only superficially to the prescriptions deriving from Mafia status and fraternization contracts. For this group, acceptance into a Mafia family represents a convenient means of advancing economically and socially. Rituals and symbols have increasingly come to be seen as a cumbersome superstructure, the legacy of a remote past that now has only a limited influence." The involvement of New York's traditional Italian-American families in securities fraud has shaken the Mafia code which requires that a "wise guy or friend" must be of Italian descent on his paternal side. This is because the financial and investment sectors in New York are predominantly dominated by Americans with Irish ancestry. Moreover, securities scams can be carried out simultaneously by the same network of criminals in different countries where financial trading is conducted. Getting accomplices from those foreign jurisdictions is likely to create more opportunities for the network. Thus, the nature of securities fraud demands the building of relationships that are sometimes uncommon in traditional organised crime ventures. The victims in the Baron case were drawn from different continents around the globe, and so were the fraudsters. But it may make sense in reducing vulnerability to enforcement to target foreign victims depending on the type of scam due to weak enforcement, especially in developing countries, although this may require the use of foreign fraudsters. The initial entry of these networks into the securities industry can be explained by the opportunities, incentives and methods involved in gaining access into any less restricted and less regulated sector, such as the financial industry. Organised crime members have adopted two different approaches in their quest for a significant share of the Wall Street pie. The primary approach is direct domination through complete de facto ownership of the brokerage and underwriting firms. This study has found that organised crime has had only limited success in the first model despite numerous attempts to gain direct control of underwriting firms.

Their second strategy is to gain peripheral control of securities firms that are vulnerable and accessible. Industry characteristics, vulnerability of the firms, and other market conditions play significant roles in determining which firms are targeted for take-over or penetration by organised crime. In general, blue-chip stocks are more resilient to organised crime control than over-the-counter and small capitalization stocks. Small capitalization and OTC stocks are susceptible to organised crime influence for various reasons, the primary reason being that they are issued by companies without a sound financial base, and with very limited history of earnings. Moreover, the larger stocks are widely held, and their extended performance history makes the earning prospect of larger stock more predictable. On the other hand, over-the-counter stocks and small capitalization stocks are not widely held. So when these companies are financially strapped, they turn to various funding sources in order to stay afloat. Some of these sources turn out to be fronts for the New York organised crime families. Once the securities-issuer fails to fulfil the terms of the contract, the organised crime connected sources that were called upon to provide financial assistance in austerity then demand to have more control of the entity to protect their interests. These firms are eventually turned over to organised crime to settle increasing mounting debts. In 2004, there were six hundred and thirty-four such small capitalization stocks traded on the NASDAQ, and about eight percent of the traded stocks firms are under the control of traditional Italian-American organised crime families according to investigative records maintained at the NYPD's Organised Crime Investigative Division. Organised crime is also gaining access into Wall Street through their gambling operations and through industry insiders with whom they had existing relationships. It is worth pointing out that in some of these cases, especially the Genovese crime family stock scams, the business aim was to diversify commercially, but it ended up as sinister control mechanism because the operators did not run the businesses properly.

The idea that criminal opportunities are indiscriminately distributed has been challenged by a series of studies showing that crime is concentrated in time and space (Weisburd 2004; Agnew 2004; Levi 2003; Cornish and Clarke 2003; Felson 2003; Pearson and Hobbs 2003; Hobbs 1998; Hobbs and Dunnighan 1998; Brantingham and Brantingham 1990; Sherman et al. 1989; Weisburd, Maher and Sherman 1992; and Weisburd and Green 1994). Criminal opportunities are differentially distributed, both in terms of the benefits they offer, and the ease with which they can be seized.

Although situational opportunities that the stock market presents to organised crime cannot be ignored, they should be placed within the context of motivations and actions of individual offenders on Wall Street. The securities market creates opportunities, with limited risks that no other criminal ventures can match. At the moment, it is difficult to know the extent of organised crime involvement on Wall Street since the knowledge about their activities in the securities market is manifested, in most cases, only after a business venture has failed. The theory behind proactive intelligence led policing is that by watching the suspects, you are led to their activities before they have completed them. So it is a valid question for police intelligence why there has not been more awareness of organised crime involvement in securities fraud before the firms collapse.

As we mentioned earlier, some of the firms that fall under organised crime control began as legitimate entities. But in the Commission case, which is discussed later in this chapter, six of the firm's principals were led into gambling through organised crime associates that they met at social gatherings throughout the City of New York. In an effort to settle gambling debts to avoid physical harm to themselves or their family members, these stock dealers provided access to organised crime in the form of insider tips, and pointed organised crime to vulnerable firms like Baron for complete take over.

THE A. R. BARON CRIMINAL ENTERPRISE

A. R. Baron, Incorporated was an organised crime affiliated brokerage firm formed in 1991 as a broker-dealer, duly registered and licensed to sell securities to the public and to underwrite the issuance of securities by the State of New York. Shortly after its registration, A. R. Baron became a sham broker-dealer that successfully defrauded thousands of investors and left them with losses totalling over $75 million and became one of the larger and more infamous cases of securities fraud in New York. According to the indictment, Baron was a pre-planned financial scheme made up primarily of people who either resigned or were terminated from other securities firms for improper trading practices. In 1993, A. R. Baron had about 60 employees, 20 of whom were brokers. By 1994, there were about 120-130 A. R. Baron employees, and, at its peak, A. R. Baron's personnel exceeded 200.

The scheme began with the recruitment of hundreds of cold-callers, most of whom were either laid-off from other brokerages, or lost their jobs when their brokerage firms went out of business. Many of these cold-callers knew (from their sworn court deposition) that baron was a fictitious firm, and that they were hired with the mission to induce and promote the issuance and purchase of Baron-backed securities, most of which were phony stocks of non-existing companies.

Some of the stocks which were promoted by Baron's representatives and its cold-callers are Health Professionals, Inc ("HPI"), Cryo Medical Sciences, Inc. ("CMSI"), Innovir Laboratories, Inc. ("Innovir") Voxel Inc. ("Voxel"), Advanced Mammography Systems, Inc. ("Mammo"), Symbollon, Inc. ("Symbollon"), Aqua Care Systems, Inc ("Aqua Care"), Laser Video Network ("Laser Video"), Paperclip Imaging Software, Inc. ("Paperclip") and Securities of U.S. Gold and Entertainment, Inc.

The Baron cold-callers, numbering over 200, told the potential investors that these companies were financially stable and profitable entities that have been in business for an extended period of time. Investors were also told that Baron had the financial strength to support trading in all the stocks that the firm promoted. What the investors did not know was that most of these companies were fictitious entities created by Baron's associates, some of whom had several felony convictions for fraud. Baron's representatives persuaded hundreds of investors to buy the stocks of the companies that were mentioned earlier. But once the stocks were purchased, the traders manipulated the price of the securities to make it appear to the investors that the value of their investments had significantly appreciated. While Baron's traders were manipulating, and parking the stocks of the eleven initial or new public offerings in which Baron acted as the broker-dealer or principal agent, the company's cold-callers were busy inducing existing clients and new investors to pump more money into the scheme. Initial public offerings are new issues of stocks that have not been traded on either an established exchange or on an over-the-counter network such as the NASDAQ. We will see later that some of the investors turned over their entire retirement and pension accounts to Baron, with the hope of a 500% return as they were promised. it is safe to argue that investors' inappropriate optimism played a pivotal role in the Baron Criminal Enterprise and helped sustained the scheme. When 28 of the investors who purchased Paperclip Imaging Software, Inc IPO saw that the value of their investments had decreased by more the 300%, they called their brokers at Baron and instructed them to liquidate their stocks. The traders refused to execute the sell orders, and instead persuaded their customers to purchase more stocks below the "market" rate from Baron's house stocks. The typical ways and tactics that the Baron scammers employed in defrauding investors are discussed later in this chapter.

The experiences of these investors who purchased Paperclip Imaging Software, Inc. (PCIS) will also shed some light on the modus operandi that Baron applied in ripping off their clients. By the time the fraud was discovered in 1996, investors had lost over $75 million to the Baron Criminal Enterprise.

PAPERCLIP IMAGING SOFTWARE INCOPORATION

Paperclip Imaging Software, Inc. (PCIS) was a start-up company seeking financing through the sales of securities. A. R. Baron was the licensed broker-dealer, which acted as underwriter of Paperclip's Initial Public Offering (IPO).

Trading in Paperclip's stocks was cleared through Bear, Sterns Securities Corporation, which maintained accounts for A. R. Barons' clearinghouse. The terms of the offering provided that the deal would not proceed unless at least $7,981,500, the "minimum offering", was raised. The agreement also stipulated that there would be a "minimum offering" of $9,178,725. Another condition, which was stipulated in the approval application by the SEC and NASD, required that prospective buyers of PCIS securities send their deposit to an escrow account at Citibank. Citibank was mandated to return deposits to subscribers, pro rata, for any shares the potential investors sought to buy, but were not allocated. As soon as PCIS went public, Baron's principals and representatives began raising money and obtaining subscriptions far in excess of the maximum offering. The brokers told potential investors that the stocks Baron was selling were legitimate stocks in legitimate companies, which were suitable for either long-term savings or for short-term growth. Investors were told that a market existed for Baron's stocks and that the firm's operation as a NASD broker-dealer was in daily compliance with NASD net capital requirements. What the unwitting investors did not know was that Baron's liquidity, profitability and financial stability were in a precarious condition. The scheme was conducted in a manner, which gave the investors a false hope that they would be able to keep control over their investments with A. R. Baron. The firm's investors ranged from retired veterans on shoestring budgets to multi-millionaire foreign corporate executives. A break down of some of Baron's victims and their experiences are discussed in great detail later in this chapter.

Investor interest in Baron-controlled PCIS securities enabled the firm to raise more money than the stipulated maximum offering because the company wanted to use the money in excess of the maximum offering to support the price of PCIS in market trading after PCIS went public. Baron's representatives also took the position that the excess funds could also be used to support the price of A. R. Baron stock. In order to circumvent the maximum offering clause, Baron's employees and principals misled Citibank through fictitious authorizations into believing that the firm had permission from the PCIS subscribers to transfer the excess money from the Citibank escrow account to accounts at Bear, Sterns in the names of the subscribers. But once the transfer from Citibank to Bear, Sterns was completed, Baron's fraudsters immediately took control of the money, which was over $1 million, for their own personal use. In an effort to conceal the scheme, Baron's representatives generated false business records, which showed that they had permission from the investors to transfer the extra funds from Citibank to Bear, Sterns. The ineffectiveness of some regulatory personnel and failure of Citibank officials to follow some of their fraud prevention guidelines which require a written investors' verification of authorizations enabled the Baron scams to continue for an extended period of time. According to the indictment, the success of the scheme led Mr. Andrew Bressman, the firm's CEO to instruct Baron's representatives on September 22, 1995 to accept only new investors for the PCIS IPO. Existing customers were forbidden from selling other securities sold at A. R. Baron in order for the company to raise more funds for its IPOs. On the same date, Mr. Jack Wolynez, the compliance officer, sent a letter to Citibank, instructing the bank to collect more funds in connection with the PCIS subscriptions. By September 27, 1995, over $20 million had been raised. On October 3, 1995, Mr. Mark Goldman, the firm's then President, sent a letter to Citibank claiming that Baron had authorizations from its customers to transfer $1,903,320 to Bear, Sterns and instructed Citibank to do so. Two days later, after the first $1,903,320 had been transferred from the Citibank escrow account to Bear, Sterns, Mr. Goldman had a back dated copy of the fictitious customers' authorizations faxed to unwitting investors. On October 9, 1995, Mr. Goldman sent another letter to Citibank, directing the bank to transfer another $241,690 from Citibank escrow account to Bear, Sterns, again claiming that he had obtained permission from Baron's customers to do so.

By the time Citibank discovered the scheme, A. R. Baron had liquidated all the funds that were held in an escrow account at Citibank. The funds were then used to buy stocks from Baron's inventory, and to cover customer debits. The investors' funds were later used to support A. R. Baron's stock. As an aside, one might note that there are two issues here: whether criminals can get hold of money, and whether ordinary investors/depositors lose. In this case, it looks as if Citibank may have been legally liable to depositors for accepting Baron's false instructions. Without acknowledging any wrong doing, Citibank settled the charges that the New York State Attorney-General brought against the firm in connection with the Baron case in 2003.

A similar scheme was used in trading the stocks of ten other initial public offerings that were underwritten by A. R. Baron. Two of their representatives also told investors that they could obtain immediate returns of 200% by pooling their monies together and subsequently using the pool to invest in certain unspecified funds. The worries of the investors were alleviated by the assurance that their investments were guaranteed by the U.S. government and that investment principals were not at risk. During cross-examination of the victims at the trial by Baron's defence attorneys, several of the investors conceded that they did not check to verify if the firm's claims were true.

It is readily available knowledge that the United States Government only insures depositors whose money is held in savings or checking accounts, and only up to $100,000. The Federal Deposit Insurance Corporation, the federal government agency charged with protecting investors' financial interests does not provide insurance on stock related investments. Even the agency's insurance on saving accounts, certificate of deposits and checking accounts does not exceed $100,000. The naivety of some of the investors facilitated the Baron scheme. As the fraud unfolded, some of the investors became suspicious that Baron was using false representations to defraud them of their hard-earned money. The investors' concern was aroused when they became aware of the excessive unauthorized trades that were executed in their accounts. Several of them made attempts to have their brokers sell their stocks, but their sell orders were dishonoured and not executed. Baron's success at the PCIS initial public offering led the company to adopt other scamming techniques, including stock parking in the sale of Aqua Care, Laser Video, Innovir, Cypros, Health Professional and other IPOs promoted by Baron. But two weeks after they opened an account at Baron, two of the investors read in a local New York paper that the company had filed for bankruptcy protection. Shortly after the firm filed for bankruptcy, the Manhattan District Attorney's office charged Baron with numerous securities violations.

STOCK PARKING AT BARON

Stock parking, as practiced at Baron, consisted of Baron's representatives making illegal, undisclosed agreements with other brokerage houses under which such brokerage houses would "buy" Baron's stocks. Baron then agreed to buy such stocks back the next morning at a guaranteed profit of $1/16 ($1.16) or $1/8 ($1.08) per share for the full amount of the shares purchased. This form of manipulation enabled Baron to artificially increase the price of Baron's house securities by making it appear that there was a real buyer for the securities at a prearranged price when in fact there was not.

The scheme also enabled Baron to appear to investors that it has enough liquidity in the stocks, and was therefore financially solvent, at a time when Baron stocks were only worthless pieces of paper. Many viable financial institutions such as Adler Coleman also invested heavily in the Baron stocks. When Adler Coleman collapsed on February 27, 1995, it held a significant quantity of Baron's assets in the form of securities. Adler Coleman was also owed about $27 million by Baron's customers for stock purchased in their names without authorization and for which no payment was made. Some of the conducts at Baron also included routine unauthorized trading and movement of stocks out of the firm's inventory account after the close of the stock market at 4:30 PM, a time period when the firm's brokers were not receiving any legitimate customer buy orders. Despite their precarious financial state, Baron continued to raise new funds to sustain the scheme. One of the investors, Mr. Colwyn Rich, lost between $18 and $25 million from his securities dealing at Baron. A brief overview of some of the investors' ordeal at Baron will help the reader in understanding the risk that the securities market pose to both sophisticated and unsophisticated investors. As the Baron case suggests, both professional con artists and traditional organised crime are committing securities fraud on Wall Street. The harm done to investors by the professional fraudsters is not necessarily less severe than those caused by scammers connected to traditional organised crime.

In the organised crime orchestrated Wakefield case, which is discussed later in this chapter, the investors were threatened with violence, and one of the brokers had his legs broken for not turning over the loot on time. Another broker was beaten repeatedly at an office located on Broadway in Manhattan until he became unconscious. Organised crime can hardly conduct transactions without resorting to violence since legitimate avenues for righting civil wrongs through the courts and administrative hearings are closed to those operating within the underground economy. The element of violence that traditional organised crime introduces to its operations cannot be ignored since a stock market fraught with violence will hardly be able to sustain its viability.

A SYNOPSIS OF INVESTORS' EXPERIENCES AT A. R. BARON

Richard Salter is a British investor whom Roman Okin, a principal, solicited by telephone. In February 1994, Mr. Salter subscribed to Cypros Pharmaceuticals and Innovir Stocks on the recommendation of Okin. He initially invested $30,000, but later opened a trading account in many of the stocks that were underwritten by Baron, and his investment eventually rose to $270,000. In November 1994, Mr. Salter's suspicion as to the viability of the firm was aroused following his meeting with Mr. Okin in London. He then wrote a letter to Baron, instructing the firm to sell his holding at market and transmit the proceeds to his bank account in England. Mr. Okin then indicated to Mr. Salter that it was a poor idea to sell a stock near Christmas, and promised that the firm would liquidate his holdings after the holidays.

In January 1995, Mr. Salter forwarded another letter to Baron, directing that his positions with the firm be sold. Following the receipt of Mr. Salter's third request, the firm promised that the investor's stock would be sold by February 6th, 1995. But that promise was not kept. Baron's failure to honour Mr. Salter's request led the investor to draft eight additional letters and numerous telephone calls to the company.

Despite several attempts to liquidate his hard-earned assets with Baron, his requests were denied. Eventually, Mr. Salter sought the legal assistance of Jonathan Kord Lagemann Esq., a New York City attorney who specializes in securities litigation in his effort to recover his money through an attachment proceeding.

By June 1996, it had become apparent to Salter's attorney that Baron was in a precarious financial condition and in danger of going bankrupt. This realization made him commence a legal action in the Supreme Court of the State of New York against

Baron in an attempt to recover his client's money through arbitration. The suit sought to freeze $270,000, which was the subject of on-going securities arbitration, so that if Salter won, he would recover some of his investments. At the court hearing, Baron representatives swore to an affidavit asserting that Baron's assets greatly exceeded its liabilities and that the firm was an operating broker-dealer actively involved in the securities business. The firm claimed at the hearing that there was no factual basis to allege that it was on the verge of collapse. Based on the affidavit, Salter's motion was denied by the court on the morning of June 21, 1996. But as of the close of the trading session on the same day, Baron went out of business.

According to the trial transcript, which I obtained from a senior prosecutor in the New York County District Attorney's office, the false affidavit submitted by Baron representatives was the decisive factor in the court's decision to deny Mr. Salter's order of attachment. During the court proceeding, it was disclosed that millions of dollars were floating from customers' accounts in an endless sequence of unauthorized trades and stock parks, even as Baron was just one week away from closing its doors. Yet, the firm maintained in court depositions that Baron's solvency was not in any jeopardy and continued to defraud investors until the last operating hour before its collapse. The firm's decision to stay afloat until the last hour was either driven by a desire for more money to distribute or complete disregard for the regulatory authorities. This kind of behaviour could increase sentences and media hostility. One of Baron's principals was asked by Mr. John Moscowe, an Assistant District Attorney from the Manhattan DA's office whether on June 20, 1996, the day he filed the affidavit stating that Baron was solvent, if he was aware that Baron was going to take a $1.1 million capital hit. The Baron respondent told the Assistant

District Attorney "I didn't know of that four hundred thousand or seven hundred thousand that you quoted." Immediately after he made this statement, the District Attorney's office played the tape in which his voice and the voice of a Bear Sterns' officer could be heard discussing such $400,000 and $700,000, thus exposing the CFO's deceit.

Deception was systemic at Baron. The "net capital" rule (SEC Rule 15C-3) requires stock brokerage firms to have a certain minimum amount of net operating capital in order to protect the firm's customers and other brokerage firms.

When a firm falls out of net capital, it must, pursuant to SEC Rule 17A-11, immediately report its non-compliance and cease to operate. Because of the importance of the net capital computations, and their impact on the continued viability of a particular brokerage house, every such broker-dealer must, pursuant to SEC Rule 17A5, submit both a monthly and quarterly "focus report" to the appropriate regulatory agency. In A. R. Baron's case, the appropriate regulatory agency was the NASD. The focus report must be prepared and kept by the Chief Financial Officer of the particular brokerage firm, and they are filed with NASD electronically. All of the eleven A. R. Baron focus reports that were prepared by its Chief Financial Officer between February and May 1996 were falsified. In those reports, A. R. Baron artificially inflated the price of stocks owned by the firm. Those inflated figures were then used in the firm's "Focus Report" thus rendering the net capital computation incorrect, and the entire focus report invalid.

At A. R. Baron, reports were falsified through a practice known as "making the close" within the securities industry. Making the close means the filing of transactions at the very end of the trading day. Putting in a buy transaction at the very end of the trading day will cause the market for that particular stock to move up and raise the price of the stock. The practice enables brokerage firm to show a closing price, which is higher than it would otherwise have been. This would increase the apparent value of the stock that the firm might be holding in inventory and the amount of its assets, thereby giving a false picture that the firm is in compliance with the net capital requirement and should therefore remain operational. These types of scam, as Professor Levi pointed out during one of our discussions, demonstrate the "weakness of the preventative as opposed to the audit trail function of regulators." The company's unwillingness to meet the net capital computation forced its traders to routinely execute bogus trades. Bogus trades involved the removal of a stock from the company's inventory by placing it into a customer account without authorization. This practice is known as "wooden ticket transactions" within the financial community. In most cases, when the customer receives the confirmation of the unauthorized trade or wooden ticket transaction, the customer would usually call the firm to complain. But at A. R. Baron, these complaints fell on deaf ears. Since these bogus stock transactions were never paid for, the dollar value of the bogus trade then went into A. R. Baron's trade debit account at Bear Sterns. A. R. Baron understood that these unauthorized or "sell out" stocks could not be sold to the "street," since there was no market for these stocks. Neither did the company have any other place to put these stocks, except into other customers' account. This was standard operating procedure at A. R. Baron. Mr. Charles Plaia, who was one of the firm's traders, admitted during the trial that "you won't use the term wooden ticket or bogus trade, you would try not to incriminate yourself. You're doing something illegal, you won't use the phrase while talking to each other, I won't say you want to give me the wooden ticket now."

According to Plaia, Baron traders in the trading room used code words when speaking about unauthorized trades. Code words such as "stock going on vacation" and "we just sent a trade of stock up into space. It just disappeared until it came back four five days later." And we "had millions of dollars of stock in space" and "I had it parked all over the place' came out of Plaia's testimony during the trial of Mr. John McAndris, Baron's Chief Financial Officer, in 1998. Plaia also admitted on the witness stand that phony trade tickets, without customers' names or account numbers were also standard modus operandi at Baron. The bogus trade tickets were then entered into the NASDAQ electronic system during the course of the day so that the volume reports would show that a broker had reported a sale. Then at the end of the trading day, another trader would provide fictitious customers' names and account numbers so that they could be written on the tickets. The fraudsters at Baron were unable to enter the phony tickets into Bear Sterns' electronic notification because that system required proper names and account numbers. Nevertheless, Bear Sterns received notices of the trades at the end of the trading day. Any clearing-house with the least amount of scrutiny would have noticed the massive amount of fraud that was going on at Baron.

But during the administrative hearing in a civil proceeding that was instituted by the Securities and Exchange Commission, Bear Sterns' representatives claimed that they had no knowledge about the various securities schemes that were executed by A. R. Baron. Bear Sterns' defence of ignorance caused the SEC to impose one of the heaviest fines that that regulatory agency has ever imposed on a securities clearing house.

In Mr. Salter's case, the New York State Supreme Court was wrong in not questioning the truthfulness of the sworn affidavit that Mr. John McAndris, Baron's Chief Financial Officer submitted since it was apparent at the time that A. R. Baron was on the verge of collapse. "There was hardly anyone coming to work" according to the words of Mr. Plaia in the weeks leading up to Mr. Salter's petition.

Another investor, Mr. Richard Souto, then 53-year old Con Edison (a public utility company based in New York) worker had opened an account with A. R. Baron in 1994 because his stepson worked at A. R. Baron. When Souto's stepson left the firm, his account was turned over to Mr. Garvey Fox and Mr. Matt Hirsch, both traders at Baron. Mr. Souto had about $77,000 in his account when his stepson left the firm, and Garvey Fox tried to convince him to buy stocks with the money. However Souto told Fox that he wanted the money to remain secure in the money market account that he had originally set up because he wanted to make sure that the money would be available for his anticipated divorce.

Despite these clear instructions, Souto learned in June 1995 that $62,500 worth of Aqua Care warrants had been purchased for his account. Upon receiving the trade confirmation, Souto called Mr. Jack Wolynez, A. R. Baron's then compliance officer, and complained about the unauthorized transaction. Souto also called Garvey Fox, who then told him that the unauthorized trade was caused by a keypunch error, and that the trade would be corrected. But the trade was never corrected. Mr. Wolynez also promised to look into the matter, and to get back to Mr. Souto once the matter was resolved, but he never did. Mr. Souto then wrote several letters of complain to Mr. Andrew Bressman,

the President of A. R. Baron, and to the National Association of Securities Dealers. He also called A. R. Baron on many occasions, but to no avail.

Eventually, Mr. Souto received a faxed copy of a sell ticket for the Aqua Care warrants, dated July 14, 1995, at 3 1/8, the same price at which the warrants were purchased. However, from his next month's account statement, Mr. Souto learned that the Aqua Care warrants were never really sold. The statement showed that Mr. Souto still held the Aqua Care warrants, but at a lower price. Additional letters to Bressman went unanswered. Subsequently, Mr. Souto received a letter from Mr. Wolynez, acknowledging the error in the trade, and who advised him that if he signed a form W-9 or sell order ticket, the trade would be reversed. Mr. Souto did as he was requested, but again, the trade was not reversed. In the end, Mr. Souto retained counsel who was able to get A. R. Baron to agree to return his client's money in a series of payments.

The first cheque cleared, but the second check bounced. A. R. Baron's bankruptcy trustee would later give Mr. Souto an additional $40,600, resulting in Souto's net loss of about $7,000.

Thomas Frystock, a 79-year old retiree living in Florida, had an account at a securities firm known as D.H. Blair, another organised crime controlled brokerage firm. Mr. Frystock's account at D. H. Blair was managed by Matt Hirsch and Garvey Fox. When these brokers moved to A. R. Baron in 1994, Frystock opened an account at that firm. However, Hirsch and Fox's unauthorized trades in Mr. Frystock's account caused the investor to write a letter of complain to NASDAQ in August 1995. In his response to the complainant, Jack Wolynez contended that there was nothing irregular about the trades. The letter from Wolynez claimed that Hirsch and Fox had received verbal authorization to make the trades, but Frystock disputed that claim as untrue. Mr. Frystock eventually lost all his investments with Baron.

Charles Jon Walker, a 55-year old insurance agent living in West Virginia, was solicited by Okin in 1992 to open an account at A. R. Baron. Although reluctant at first, Okin's aggressive and hard-selling tactics eventually led Mr. Walter to agree to open an account, initially with $10,000. This amount soon grew larger when Walker transferred all of his retirement income to A. R. Baron, but made it clear to Okin that his funds were earmarked for his retirement.

At first, Crown Medical, Cypros Pharmaceuticals, and Health Professionals, Inc., the stocks that Okin recommended to Walker, all seemed to be doing well. When Health Professionals was at $7, Okin assured him that it would soon be going up to $50. For a little while, the stock climbed to $12, but by 1993, it had dropped to $2. Walker, a very informed investor, who was following the market closely then gave Okin a "stop loss" order, but the order was never executed. Mr. Walker was finally able to transfer his funds out of A. R. Baron in October 1993. But by then he had lost over $200,000.

Another investor, Albert John Walraven, was living on a farm on the Isle of Man when, in October 1992, he received a "cold-call" from Mr. Glenn O'Hare, who was working at D.H. Blair & Company at the time. In November 1992, he learned from another telephone call that O'Hare had moved to A. R. Baron. Mr. Walraven decided to open up a trading account with O'Hare at A. R. Baron. Over the next four years, Mr. Walraven purchased a number of different stocks at O'Hare's suggestion. Those stocks included Cypros Pharmaceuticals, Innovir, Voxel, and Paperclip Imaging, for which Mr. Walraven invested about $150,000.

When Cypros Pharmaceuticals stock appears to have reached an appreciable mark, Mr. Walraven ordered that his holdings be sold. However, O'Hare told him that he would lose too much money if he sold at that time. After several requests, Mr O'Hare eventually sold Walraven's positions in June 1995. But instead of turning over the proceeds of the sale to his client, O'Hare then invested the money in other stocks without authorization. When Walraven attempted to have his funds transferred out of A.R. Baron, Mr. O'Hare placed a photocopy of Walraven signature on a bogus rescission of the transfer order. Eventually Mr. Walraven lost a total of $93,000.

John McIntyre, a 69-year old retiree living in Scotland, was solicited by Joseph Scanni to open an account at Baron in 1992. After several telephone conversations, Mr. McIntyre entrusted about $50,000 with Scanni, who invested all the money in Paperclip Imaging. In the end, Mr. McIntyre lost all of his $50,000 investment.

Jack Robyn, a 62 year-old retiree living in Florida, received a telephone call in 1992 from Mr. Brett Hirsch, who was then working for D. H. Blair & Company. Robyn agreed to open a trading account with Hirsch, and when Hirsch moved to A. R. Baron in 1994, he transferred Mr. Robyn's account with him. The account that Robyn had at A. R. Baron did not allow Hirsch to engage in trades without authorization. However, soon after Brett Hirsch moved to Baron, Robyn learned that Hirsch had been conducting unauthorized transactions on his behalf. Robyn then made numerous attempts to reach Mr. Hirsch, but his efforts were unsuccessful.

Mr. Robyn became even more concerned when he saw that Hirsch had purchased shares of Advanced Mammography for $2 per share, and had then purchased the stock again for $15 per share. In June 1995, when Robyn had what appeared to be a profit of $2,000 on paper, Hirsch purchased warrants for Symbollon and additional shares of Advanced Mammography. Robyn authorized neither these trades nor the later purchase of 73,000 Aqua Care warrants on the day that Hirsch sold out Robyn's position in Advanced Mamography. Concerned about these trades, Robyn made another attempt to file a complaint by telephone, but his calls were answered by a receptionist who told him that someone from the firm will return his calls, but none of his calls were ever returned. So in November 1995, Robyn wrote a letter of complaint to Mark Goldman and Andrew Bressman, and to the NASD. A letter from Baron to Robyn, dated February 29, 1996, asserted that Robyn had waited too long to complain about Brett Hirsch's unauthorized trades, and was therefore liable for his loss. Mr. Robyn invested a total of $57,000 with Brett Hirsch at Baron, but he only got back $16, 000 when he was finally able to close his account with Baron, leaving him with a net loss of $41,000.

Mr. Almon Brunkow, a 76-year old resident of Denver, Colorado, was solicited in 1992 by Mr. Garvey Fox to open an account at Baron. Brunkow agreed to do so, and in 1995, Mr. Fox indicated to Mr. Brunkow that he was going to purchase Laser Video Network warrants on his behalf. Brunkow objected to the purchase of Laser Network warrants because the company did not have any earnings record. Despite Brunkow's refusal, Fox proceeded to buy the warrants without authorization. At the time, Brunkow's account was worth about $250,000.

Mr. Brunkow then wrote a letter of complaint about the unauthorized trade to Mr. Jack Wolynez, Baron's then compliance officer. In November 1995, Brunkow received a letter from A. R. Baron, promising a careful review of his complaint, but nothing was ever done. Brunkow was only able to recovered $59,000 from the Baron bankruptcy trustee, leaving him a net loss of $191,000.

Schlomo Appel, President of VIP Health Care Services, opened an account at Baron with Brett Hirsch as his account representative in 1991. In February 1995, Appel noticed that although he had only $130,000 in his trading accounts, he had been sent a purchase confirmation for purchases totalling $270,000 without his consent.

Mr. Appel then instructed Hirsch to reverse the trades, but his order fell on deaf ears. Mr. Appel subsequently went to Mark Goldman for redress, but no one ever got back to him until April 1996, when he received a letter from Baron saying that it was assumed that the matter had been resolved. Appel's response to Baron's communication clearly stated that the matter was still unresolved, but nothing else was done to resolve the situation. Eventually, the bankruptcy trustee for Adler Coleman, the clearing-house firm that had actually negotiated the unauthorized trades for Baron, paid some money to Mr. Appel, but his net loss was $60,000. In any case, the total failure of internal complaints systems doesn't matter when firms are going out of business.

John Gallup, a 43-year old tractor-trailer driver from Hartford Connecticut, who earned $25,000 per year, invested his $70,000 inheritance from his parents with Mr. Glenn O'Hare at Baron in April 1993. By August 1995, Gallup's account appeared to have increased in value, at least on paper, from $70,000 to almost $125,000. Two months later, Mr. Gallup received a statement from Baron showing that his account was now worth less than $50,000. O'Hare's explanation when he was questioned by Mr. Galiup was that other brokers had executed certain trades without O'Hare's knowledge. And that those unauthorized trades created the problems with respect to the value of the positions that Mr. Gallup had in Voxel, Innovir, Paperclip Imaging, and Physician's Care Network. Mr. Gallup lost all, but $10,000 of his original investment. However, he allowed O'Hare to continue to manage his dwindling portfolio until O'Hare left Baron in 1996, shortly before the firm collapsed.

Robert Kiefer, a 40-year old merchant seaman opened an account at Baron in 1994. Joseph Scanni was his stock representative at Baron. During his court testimony, Mr. Kiefer indicated that he gave Scanni authorization to sell his stock if the price of the stock appreciated while he was away at sea, but did not authorized him to buy any stock without his consent. Despite these instructions, Scanni executed several unauthorized purchases in Mr. Kiefer's account. In June 1995, Kiefer's account was valued at almost $300,000. However, when the stocks began to decline in July 1995, Mr. Kiefer made numerous telephone calls to Scanni, but Scanni could not be reached by telephone, neither did he return any of Mr. Kiefer's calls.

In August 1995, Mr. Kiefer petitioned Baron to sell his positions with the firm, but was told that his trade could not be executed without the participation of his account executive. When Mr. Kiefer was finally able to reach Scanni on August 28th, 1995, he was told that his stocks could not be sold at that point because Baron's "clearing" broker, Adler Coleman, had filed for bankruptcy and all of the shares on hand were frozen.

A month later, Mr. Kiefer was contacted by Garvey Fox, who left Baron three weeks earlier for First United Equities. During his session with an investigator, whom I interviewed for this project, Mr. Kiefer disclosed that he consented to transfer his account to First United Equities after he was informed by Fox that Baron was a fictitious brokerage firm that was controlled by two of New York's organised crime families.

Following the transfer, Mr. Kiefer instructed Fox, his new account executive to liquidate his positions. The stocks were finally sold for only $42,000, leaving Mr. Kiefer with a paper loss of about $258,000. In the end, Kiefer, who had invested approximately $160,000 with A. R. Baron, lost all but $50,000 of his original funds.

Hugh Armytage resides in London, from where he opened a trading account with Baron in May 1994. His account at Baron was initially handled by Joseph Scanni, but was later turned over to Roman Okin. In June 1994, Mr. Armytage purchased 6000 shares of Innovir at $7.50 per share. In November 1994, the Bloomberg Radio reported that the stock has risen to $8 ¾. Realizing that he stood the chance of making some profit on his investments, Mr. Armytage instructed Okin to sell his Innovir security, but Okin talked him out of selling it. In July 1995, the price of Innovir went up to $11.75 per share, and Mr. Armytage was persuaded to purchase an additional 4,500 shares of Innovir at that price. Two months later, the bid-ask price of Innovir stock dropped to $8 per share. Concerned about his investments prospects, Mr. Armytage again directed that his position with Baron be sold. But instead of a sale confirmation, Mr. Armytage received confirmation for an unauthorized trade purchase of 10,000 additional shares of Innovir at $8 per share in September 1995. Upon the receipt of the notice for the unauthorized transaction, Mr. Armytage immediately sent a fax to Okin instructing him to correct the trade. Mr. Armytage later received a letter stating that 16,000 shares of his Innovir stock had been sold at $5.25 per share. He eventually lost $80,000.

Elisa Cohen, an assistant treasurer at New York University testified that in 1994, the University received a gift of $75,000 "restricted" shares of Innovir. When the University attempted to sell the stock, it was told that the shares could not be sold immediately. In March 1995, Ms. Cohen learned from the donor that the stock could be sold in August 1995. One of the restrictions was that the stock could only be sold through Baron. Ms. Cohen then contacted Mr. Mark Goldman at Baron, who told Ms. Cohen that the University must open a trading account at Baron before it can sell the donated shares.

Ms. Cohen, who was in charge of gifts to the University and had handled hundreds of similar gifts donated to the centre for higher education testified that she had never heard of such a requirement.

However, after the University did as it was requested, Goldman still refused to sell the stock, which at the time was trading at $11 3/8 and would have given the University $800,000 if the stock had been sold for that amount. By the time the University was finally able to sell the Innovir stock, its worth had dropped to penny stock levels. At the time of the trial, New York University still possessed 20,000 shares of Innovir, which was worth only 35 cents per share. Beside the tax benefit for donations to non-profit organizations under the Internal Revenue Service code, it is unknown if Baron's gift was aimed at impressing bankers, investors and the public or to try to lure New York University into investing in the fraudulent scheme.

Donald I. Tendell lives in the United Kingdom, where he is a chartered accountant. In February 1995, like Mr. Salter, Mr. Tendell opened a trading account at A. R. Baron, with Mr. Roman Okin as the account executive. Shortly thereafter, Mr. Okin also opened a second account in the name of Mr. Tendell's wife, Maureen, without either Mr. Tendell or his wife's authorization. Mr. Tendell initially invested shares of Cypros Pharmaceuticals, Innovir, Voxel, and Jockey Club. Less than three months after their accounts were opened, the Tendells received a confirmation for the purchase of $450,000 worth of stock that neither him nor his wife authorized. Mr. Tendell immediately contacted Mr. Okin to reverse the transaction because he did not have the funds to pay for the trade, neither did he authorized such huge trading in his account.

Upon receipt of Mr. Tendell's request, Okin promised that he would "take care of it" according to court papers. But he did not. A week later, Baron's clearing house, Adler Coleman, went into bankruptcy and the $450,000 worth of unauthorized stock was frozen, leaving a debit balance on Tendell's account.

In August 1995, the unauthorized stocks in Mr. Tendell's account were unfrozen, when Bear Stearns became Baron's clearing-house. Instead of reversing the unauthorized transactions in Mr. Tendell's account, Okin contacted Tendell, and asked him to do a "subordinated loan" with Baron, to enable Baron to raise the necessary net capital that would allow it to return to trading. Mr. Tendell was told that without the loan, Baron would not be able to remain in business. Mr. Tendell eventually agreed to the loan because his stock would otherwise be valueless.

After several days of discussion with the investor, Baron's law firm, Gusrae Kaplan and Bruno faxed Tendell an agreement to activate the subordinated loan, which he conditionally signed on September 8, 1995. However, after mailing the signed agreement to Baron's attorney, Mr. Tendell instructed Baron's counsel to hold the loan agreement in escrow until he has had some time to look at Baron and the firm's records more diligently. The desire to verify Baron's true financial state led Mr. Tendell to embark on a journey to New York on September 20, 1995.

When Mr. Tendell and his friend, Mr. Keating, who had also invested a large amount of money with Baron, arrived in New York, they were first met by Okin at their hotel. The next day, Okin brought Mr. Tendell and Mr. Keating to Baron, where they met with the firm's Chief Financial Officer. Subsequently, Tendell received a fax of Baron's audited accounts, dated December 31st, 1994, and a draft balance sheet that ended on August 31st, 1995.

The first of these documents was a statement signed by Mr. McAndris, regarding Baron's financial status and the document showed that the NASD had approved Baron's most recent Focus Report. The document also indicated that the NASD had approved Baron to resume business as a securities dealer effective September 8th, 1995.

During the meeting with Mr. McAndris, Mr. Tendell raised some concerns about Okin's unauthorized trades in his account.

In his response to Mr. Tendell's complaints, McAndris said that Baron had a policy, which stipulates that, if a broker inadvertently buys a stock, the firm would such sell such stock and retain the profit, if any. But if the transaction results in a loss, the loss would be borne by the broker concerned. He further reassured Mr. Tendell that under this policy, a broker does not have the incentive to engage in unauthorized trades. The Adler Coleman bankruptcy issue was also discussed during the meeting, at which time the investors were told that the Adler Coleman bankruptcy trustee was holding certain Baron stocks totalling $6,000,000. Mr. Tendell was assured that his loan would be repaid within a year, and perhaps earlier once the Baron's stocks held by Adler Coleman trustee were released to Baron.

Mr. Tendell was never told that as of July 26th, 1995, there existed a "stand still and option agreement" which stipulated that Baron would not receive any money from the Adler Coleman trustees, unless Baron made payments to Adler Coleman's inventory. Following his meeting with Mr. McAndris, Mr. Tendell also met with Andrew Bressman, Baron's Chief Executive Officer, who confirmed that Baron would return to profitability as soon as the firm resumes business in early 1996. It was based on these facts that Mr. Tendell resolved to make a subordinated loan to Baron.

Mr. Tendell did not get back any of his money. He lost the $375,000 that was put up to keep Baron afloat, as well as his original investments which was approximately $1,000,000.

Two of Baron's employees who cooperated with the prosecution for a reduced sentence conceded during the trial that the firm overstated account receivables and inventory by as much as 80%. The firm also falsely stated that it intended to comply with the critical loan covenant, when it was obvious to the firm's principals that they would be in default. The scheme was orchestrated by the use of two sets of books and records. One was a secret set of records which accurately reflected the firm's deteriorating financial condition, while the other was a public set which fraudulently overstated the company's financial condition.

At no time did the firm maintained a system of internal accounting controls sufficient to provide assurances that accounting transactions were recorded as necessary to permit the proper preparation of financial statements in conformity with generally accepted accounting practices. Yet, Baron was able to escape regulatory auditors for most of the five years while it was in operation because SEC investigations into firms operating on Wall Street are initiated primarily through random selection or triggered either by the filing of a formal complaint by someone who has been wronged.

The agency's investigations into investment firms are also triggered upon receipt of allegations of fraudulent transactions from confidential informants or via the submission of a suspicious activity report by internal SEC investigators.

As I indicated earlier, Baron began operations as a broker-dealer in securities in 1991. Shortly after its formation, the firm established an elabourate compliance department, with Mr. Jack Wolynez as the firm's compliance officer, thus satisfying the SEC's requirement for an internal watchdog. Baron established an elaborate compliance department with fully staffed accountants and auditors probably to mislead regulators into thinking that effective fraud prevention controls and safeguards were in place. Baron also impressed potential investors by concentrating most of its underwriting functions on new offerings in medical field related stocks that investors thought had good growth potentials.

With the help of the firm's Chief Financial Officer, Baron was able to hide its true financial status from regulators, external market analysts and investors, using a similar fictitious accounting scheme that Andrew Fastow, Enron's Chief Financial Officer allegedly employed with the help of Accountants Arthur Anderson. Baron's scheme began to unravel in late 1995 when the SEC started an investigation into the firm following series of allegations (beginning in August 1993) of unauthorized and excessive trading in customers' accounts and consistent failure of the firm's brokers in executing clients' sale orders.

By the time the SEC inquiry established that Baron was a fraudulent entity and referred the case for criminal prosecution in 1996, investors had lost over $70 million. The following accounts by former Baron employees who cooperated with the prosecutors in exchange for reduced sentences will shed some light on how the firm structured its accounting system to facilitate fraud, and how clients' complaints were handled without drawing the attention of regulators. The scheme continued until January 13th, 1997 when Baron's principals and employees were handed 174 counts of indictments by the New York District Attorney's Office.

TESTIMONY OF BARON EMPLOYEES

Cold-calls to potential customers were made from the firm's "board room," where there were seven rows of cold-callers sitting in groups of five, six, or seven across from each other. The cold-callers worked from scripts, which the Gilbert brothers taught them to use.

Dowling, one of Baron's employees testified that he committed fraud on every single day that he was at Baron, and that the other cold-callers were asked to "pitch" Voxel, Innovir and Paperclip Imaging, which were "house stocks". Cold-callers were not to be concerned with a stock's suitability for a particular client. Three months after being at the firm, Dowling learned that there was a "no net sales" rule at Baron. The rule stipulates that a broker at the clients' request cannot sell their clients' shares, unless the broker was able to find another client or broker to buy the stock. As a result of the no net sales policy at Baron, Dowling was unable to carry out sell orders that his Paperclip Imaging IPO customers had given him. Dowling eventually left Baron in October 1995.

Marissa Garcia, a 33-year old registered sales assistant, worked at Baron as Andrew Bressman's Executive Assistant for 11 days before leaving the firm. She testified that on her first day at Baron, a customer called to request his Internal Revenue Service Form 1099 (a tax form) to enable him file his taxes.

Since it was her first day at the firm, she then went to her "boss" who told her that the firm doesn't maintain the form. Ms. Garcia said she found the response to be strange because at every firm where she had worked, there had always been a form 1099. On her sixth-day at the firm, Ms. Garcia received another call from a client who was interested in looking at the firm's monthly statements. She then asked her supervisor about the location of the firm's monthly statements, so that she will be able to present them to the customer upon his arrival.

But she was told that only the previous month of the firm's statements were kept on hand, and that requests for other than the last month's statements would require a visit to the microfilm department. She then noticed a shredder in the "cage" where the firm's records were kept. Ms. Garcia then told the jury that she had never seen a shredder in a records department before. She also testified that during her 11 days at the firm, she received more than 80 calls from unhappy customers, and that in some cases, "the customers' computer records and statements did not match the ones that were kept at Baron."

Ms. Garcia told the court that on her tenth day at Baron, she was asked to effect a transaction in a client's account. She noticed that the transaction requires a signed letter of authorization from the client who was overseas and could not be reached. However, when Ms. Garcia returned from lunch, she found the authorization on her desk, with a signature. Ms. Garcia then asked how the authorization was obtained. One of the other young assistants then told her she had taken care of it, and that she should "not worry."

After this incident on November 7th, 1995, Ms. Garcia resigned the next day from Baron. Ms. Garcia admitted on the witness stand during the trial that she knew that "there was something wrong by the end of my first week at Baron" but failed to report it to anyone outside the firm to protect her employment.

Roman Okin became a securities broker for the first time at D. H. Blair & Company in October 1990, where he met Andrew Bressman, Richard Acosta, Rob Gilbert, and Jeff and Alan Weissman. When Bressman and Weissman left D. H. Blair to start A.R. Baron, Incorporation, Okin was asked to go with them. Okin eventually left D. H. Blair for Baron in June 1992. Mark Goldman was the President of Baron at the time, and Mr. Weissman was the Chief Executive Officer (CEO). Shortly after Okin arrived at Baron, Weissman was injured in a motorcycle accident, and he left the firm. Mr. Bressman then succeeded Weissman as the CEO and later as president. While at Baron, Okin passed his Series 7, 24, and 63 licensing examinations, and he eventually became a Senior Broker. Okin estimated at trial that in 1994, approximately 30% to 40% of his trades were illegal.

By 1995, Okin was a 10% owner of the firm, having earned the ownership percentage by helping Bressman manipulate the markets in the firm's securities. From then until July 1996, he told the court that he earned a total of $5,000,000 primarily by engaging in unethical and illegal trades, and by lying to virtually all of his customers.

During Mr. McAndris's trial in 1998, Okin testified as a prosecution witness, having pled guilty on June 5, 1997, to one count of Enterprise Corruption, a Class B felony.

Under the New York State penal code, a defendant charged with a Class B Felony faces up to 25 years of imprisonment if convicted, whereas Class A Felonies carry a life sentence.

At the trial, Okin testified that during his tenure at Baron, the firm engaged in a number of improper accounting practices, which materially misstated its results of operation. These practices included the use of side letters to modify the terms of contracts, and various other activities which had the effect of "holding the books open" beyond the end of several reporting periods. It was a common practice at Baron to load its quarterly and annual account statements with fictitious figures. The firm gave investors false account statements showing profitable trading in securities on behalf of investors.

The false account statements also claimed that the investors' positions with Baron were insured by the Securities Investor Protection Corporation, when in fact, they were not. Many of the securities shown on the account statements, according to Okin, did not exist.

Okin also testified that he was taught by Bressman to engage in a no net sales policy, which regularly required the crossing of customers' stocks. According to Okin, at Baron, these policies were required because the prices of the house stocks were manipulated, leaving the Baron customers with most of the shares. If Baron house stocks were sold on the "street," the prices would go down. So the firm resolved that concern by "parking" its house stocks with other friendly brokerage houses, in order to take the stock out of Baron's inventory for the purpose of net capital computations. In this type of "parking" scheme, Baron would sell its house stocks to a friendly broker at another firm, with the understanding and the guarantee that Baron would buy back the stock shortly thereafter. The stocks were then repurchased at a price that would guarantee a small, but certain per-share profit to the friendly broker who had allowed the stock to be "parked" in his account.

Most of these friendly co-conspirators cooperated with the prosecutors from the Manhattan District Attorney's Office, and either had their charges dismissed or were charged with lesser violation for which only a fine was appropriate.

Okin testified that he carried out large volumes of unauthorized trades in his client's accounts with Baron's house stocks. The house stocks were then taken out of Baron's inventory for net capital purposes, and "parked" for a few days in the customers' accounts. Bressman also did the same thing, according to Okin. Okin also told the court that there were days on which either he or Bressman single-handedly kept the firm afloat with unauthorized trades. As Okin explained, "day after day, we barely made net capital requirements and we would only make net capital requirements by either soliciting money from customers or doing unauthorized trades and parking the stock." More than four months before the firm collapsed in 1996, all telephone calls or faxes from customers, directing him to sell a stock, were simply ignored. Mr. Okin received a one-year sentence for his role in the Baron scheme, a far cry from the 25 years prison term he would have gotten under the States' penal law and criminal procedure law guidelines.

His significantly reduced sentence came as a result of his cooperation with investigators and prosecutors within the framework of the plea bargain amendment in the New York State penal law. The depositions of Baron employees may well have been true, but weren't these fraudsters also trying to evade prosecution or reduce their sentence by providing damaging testimonies against their bosses to please the prosecutors in order to secure a lesser sentence under the State's penal guidelines?

In May 1997, a New York County Grand Jury indicted fourteen defendants on a 174-count indictment charging Enterprise Corruption, Grand Larceny in amount ranging from millions to thousands of dollars per victim and securities fraud. In the 174-count indictment, the prosecutors alleged that Mr. Bressman directed and supervised securities fraud and theft from individual investors in stocks sold by Baron. He was also accused of manipulating initial public offerings of securities to enrich himself and his relatives.

Mr. Goldman, Mr. McAndris and Mr. Wolynez were charged with providing administrative support to the criminal enterprise. It was further alleged that they actively assisted and concealed the securities fraud and theft committed by their registered representatives, and generated documents falsely recording the financial condition and activity of Baron.

Mr. Plaia was charged with manipulating the price of securities by "knowingly handling false and fraudulent purchase orders, and kept the price of the securities sold through Baron at an artificially high price."

The indictment also charged Mr. Plaia with adjusting Baron's inventory- the securities owned and traded by Baron for its own account- by entering false purchase orders to make it appear that customers had bought stocks from Baron.

Other representatives, Roman Okin, Richard Acosta, Glenn O'Hare, Joseph Scanni, Brett Hirsch, Garvey Fox, Mathew Hirsch and Richard Simone were accused of selling securities by fraud and deceit. The indictment also charged them with manipulating the price of securities, refusing to act on customer directions to sell securities, and engaging in other frauds and falsifications, which furthered the criminal enterprise.

Of the fourteen defendants that were charged in the Baron case, thirteen pleaded guilty, ten of those to enterprise corruption, and three to lesser felonies. Only John J. McAndris, the company's Chief Financial Officer and Supervisor of Baron's Compliance Department, opted for a jury trial and was found guilty on all counts.

Organised crime did not construct the patterns of racketeering in the Baron case not least since the existing personnel were well organised for this purpose. So what did traditional organised crime contribute to the fraud, or were they just a cost element to the scheme? The key point here is that they effectively took advantage of the personal network of connections essential for organised fraud, which eventually led to their control of the key figures in the firm.

Organised crime thereby profited from the scheme by milking the industry fraudsters. As such, they acted as parasites, imposing themselves on the licensed stock traders who were already deeply involved in securities scams. In order words, traditional organised crime did not put together people that were formerly unrelated in the Baron case. Instead, through their own intelligence network, they happened upon a firm that was already deeply involved in stock swindles. They then employed the tools of extortion and intimidation to gain a slice of the Wall Street pie in the classic extortion model of organised crime that Gambetta (1993) discussed in his work on the "Sicilian Mafia: The Business of Private Protection." Organised crime does not penetrate the strong healthy wood but enters through the existing spots of decay.

In his study on organised crime, Van Duyne (1994:54) argued that "if the legitimate capitalist market is free and open, so is the crime market. Increased global mobility is not restricted to the law abiding. The mobility of crime entrepreneurs is just as conditioned by expectations of profit and wealth". Government intervention in the securities market is limited at best, since the industry is classified as a self-regulatory organisation. The nature and dynamics of the stock market itself, has also helped to infuse sophistication into the organised crime networks that are operating on Wall Street.

It is for this reason that Beare (1996:67) proposed that "if there is a greater sense of danger from the current organised crime activities, it is due to the sophistication of the operations, the violence, the diversity, and the collaborative nature of many of the operations. Not only are organised crime groups tolerating each other, but they are also building the networks required for efficient business operation". She concluded that the thinking of organised crime has definitely become corporate. Though this corporate thinking is plainly only partial-otherwise there would not be so much opposition from older members- the corporate structure of the next case and the sophistication with which the scheme was executed confirmed in part Beare's observations.

THE WAKEFIELD SECURITIES FRAUD SCHEME

On June 17th, 1999 the New York Post reported that "Eighty five people, some with ties to the Italian and Russian Mafia, were charged for a massive $100 million pump and dump stock scheme." The then Brooklyn U.S. Attorney Zachary Carter said a three-year undercover investigation uncovered "a nest of securities scam artists that bilked thousands of ordinary investors." Prosecutors say the scam was simple: Licensed and unlicensed brokers would cold-call people and hard-sell particular micro-cap stocks.

The scam artist, who owned large blocks of stocks, would unload these stocks at a huge profit, usually before the stocks collapse—leaving the unwitting "investors" with virtually worthless stocks, authorities said. Carter said the investigation, began years ago to trace mob infiltration of Wall Street, gradually uncovered a host of dirty-dealing brokers at several firms. Carter said organised crime in New York City has targeted Wall Street after being pushed and prosecuted out of other industries" (New York Post, June 17, 1999, page one).

On March 9th, 2001, the New York Daily News reported that "the feds announced yesterday the indictment of 20 crooked brokers, including two Gambino associates, for allegedly scamming investors out of $100 million from 1994 to 1998. The classic pump and dump scheme involved three brokerages with offices in Manhattan, Long Island, New Jersey and Chicago.

The scam left thousands of investors holding "worthless paper," according to then U.S. Attorney Loretta Lynch, who announced the indictments along with officials from the FBI and Securities and Exchange Commission and New York State Attorney General Eliot Spitzer. In this case, according to Lynch, "we see organised crime used not just as muscle or enforcement, but directly involved in day-to-day operations of the brokerages" (New York Daily News, March 9, 2001 Page 37).

The Wakefield Group was made up of registered securities firms that were controlled by the Colombo and Gambino crime families. These firms were licensed to offer, buy, sell and trade securities within the State of New York. The corporate members of the group consisted of the Wakefield Financial Corporation, G. K. Scott and Co., Inc., and Kelly Trading Co., Inc.

In the corporate structure of the Wakefield Group, Alexander Minella, Keith Minella, John Kevorkian and George Kevorkian stood at the top of the hierarchy. Mr. Alexander Minella was the Chief Executive Officer and President of Wakefield Financial. Mr. Keith Minella was the owner and President of Kelly Trading and a registered broker at Wakefield Financial. Mr. John Kevorkian served as the head trader at G. K. Scott, while Mr. George Kevorkian was both an owner and President of G.K. Scott and Company.

Below the top-management of the Wakefield Group were mid-level representatives who performed various functions. These mid-level personnel were Parsons Eng, who was a principal in Wakefield Financial, and Mr. Joseph Zaborowski, a broker with Wakefield Financial and manager of the firm's Manhattan, New York office. Other mid-level personnel included Mr. Keith Friedman, a broker and manager of Wakefield's Huntington, Long Island office. Ms. Theresa Crescenzi, a trader at Wakefield, Mr. Donato Delvecchio, a trader at Kelly Trading and Mr. Joseph Elkind, a trader at Baird Patrick & Co., Inc.

At the lowest level of the Wakefield Group were Howard Edrich, Raymond Koubek, Phillip Ardizzone, Arthur Goldstein, George Palefsky, Theresa Fiorillo and

Kenneth Stoops, all of who were brokers at Wakefield Financial. Two of the Wakefield associates; Morton Kantrowitz and Jack Maffai were traders at Nash Weiss & Company and Carr Securities Corporation respectively.

The Wakefield scheme began in September 1987 with what was misrepresented as independent, competitive firms in the securities industry. In reality, it was a single criminal enterprise that was formed by New York's organised crime families, to systematically defraud investors of millions of dollars.

The mainstay of the scheme was the manipulation of the securities of Topologix, Inc and certain other NASD securities. The defendants took advantage of the inflated market for the stocks that they had created by dumping their house stocks on the investors. The scheme was sustained by the systematic use of publishing houses for promotional coverage in exchange for compensation.

Topologix Securities were approved for trading on the NASDAQ by the SEC on October 4, 1988, and began trading at about 1300 hours on that date. Prior to the approval, Wakefield Financial Corporation and G. K. Scott & Co., Inc. entered into an agreement that both firms would jointly underwrite the initial public offering of Topologix Inc. Securities in the IPO of Topologix were sold in units, which consisted of six shares of common stock and two warrants. Each Topologix IPO unit was offered to the investing public at $6.00, which was equivalent to $1.00 per share of common stock. Common stock, as we indicated in the previous chapter represents equity ownership in a corporation, while a warrant gives potential investors the right to purchase a share of common stock at a future time and at a specific price.

According to the indictment, in a series of trading before the sale of Topologix Securities, Mr. Minella, Mr. G. Kevorkian and Mr. J. Kevorkian discussed their plan to substantially rig the price of Topologix securities. As part of the scheme, a significant portion of Topologix IPO securities were placed into investors accounts over which the Wakefield Group exercised some degree of control. The brokers then purchased the same securities from those accounts at low prices, in most instances without the prior knowledge and authorization of the investors.

The scheme provided Wakefield with a source of cheap stock, which the firm sold at higher prices, for the company's benefit.

All the investors were told that they would receive the best available price upon the sale of their securities. But the investors were unaware that Wakefield had already determined the price at which their securities will be sold before the Topologix IPO was publicly traded on October 4, 1988. The Wakefield fraud case is unique because the entire scheme related to the Topologix securities occurred within a one-week period.

In order to give the reader a thorough understanding of how the Wakefield criminal enterprise defrauded hundreds of investors, a synopsis of their activities during the week of October 4, 1988 is necessary.

DATED ANALYSIS OF THE WAKEFIELD SCHEME

The following dated analysis of the fraud was taken from a trial transcript, which I obtained from one of the attorneys who prosecuted the defendants in this case.

The conspirators agreed to falsely represent to investors that orders for the purchase of Topologix securities would be executed at the best available price, and to conceal from those investors that the prices at which those orders would be executed had been determined prior to the commencement of trading. This is very important because the price-fixing arrangement gave the stock a low volatility rating, which spurred investors and brokers' interest in the security. The conspirators further agreed to conceal from investors that order tickets reflecting the purchase of Topologix securities at specific prices had been prepared prior to the commencement of trading.

The scheme began on September 2, 1988, when George Kevorkian told Al Minella to speak to John Kevorkian "...cause he may have 1 or 2 small guys that he figures can get the stock right back."

On September 6, 1988, John Kevorkian told Al Minella that he was going to "place Topologix IPO stock into controlled accounts at the equivalent of $1.00 a share, buy the stock back from those investors at $1.250 or $1.125 per share, sell it to other investors at $2.375 per share."

On October 2, 1988, George Kevorkian asked G. K. Scott to buy Topologix units for IPO investors at $7.00 per unit, which was the equivalent of $1.167 per share.

On October 4, 1988, John Kevorkian asked G. K. Scott to purchase Topologix units from IPO investors at $7.00 per unit, which was the equivalent of $1.167 per share. Later that same day, John Kevorkian and George Kevorkian caused G. K. Scott to sell shares of Topologix to common investors at prices ranging from $1.50 to $2.375 (2 3/8) per share.

Prior to the commencement of trading on that date, Al Minella informed brokers at Wakefield Financial that they would have to return some traded stocks back to him if he asked for them. As Minella instructed one broker on September 21, 1988, "the most important thing is that...the people you give it to will give it back to you at any price that we want...so we can make some money". Following those instructions, Wakefield Financial purchased 5000 units from Richard Greenberg, an IPO investor, at $7.00 per unit, which was the equivalent of $1.167 per share on October 4th, 1988.

Later that day, the firm sold the security to investors at prices ranging from $1.75 to $2.375 (2 3/8) per share.

Prior to that transaction, Keith Minella was asked to place orders to buy 17,500 Topologix units with Terri Crescenzi from the account of Christine Borkowsky at 6 ¾ ($6.75) per unit, and for Wakefield Financial to sell those units to the account of Kelly Trading Co., Inc. ("Kelly") at 7 ($4.00) per unit. On October 4, 1988, those trades were executed. On the same day, Al Minella, of Wakefield Financial, instructed Donny Delvecchio, of Kelly, to "...go to quarter bid." (The "bid" is the price at which a market-marker is willing to buy a security.) Thereafter, Kelly Trading entered a price change into the NASDAQ system, raising its bid quote on Topologix common to 2 ¼

($2.25). On October 6, 1988, Kelly Trading purchased 500 Topologix units from Investors at 15 ½ ($15.50) per unit.

Later that day, according to the trial transcript, Donny Delvecchio informed Keith Minella that he had just bought 500 Topologix units at 15 ½ ($15.25) per unit, but hadn't told John Kevorkian yet. Minella instructed Delvecchio to tell John.
A few minutes later, Kelly Trading sold 500 Topologix units to G. K. Scott at 15 5/8 ($15.625) per unit. Two days earlier, Parsons Eng, a principal in Wakefield Financial who worked in its trading operation, asked five of his investors to sell Topologix securities, which they had purchased in the IPO. Joe Elkind, of Baird Patrick, was also asked on the same day to buy 10,000 shares of Topologix common from Datek Securities. These trades were all executed on October 4, 1988 as well. The successful execution of those manipulative trades led Al Minella, of Wakefield Financial, to instruct Joe Elkind, of Baird Patrick, to have Thomson McKinnon raise its quotes for Topologix units. Fifteen minutes later, Thomson McKinnon raised its NASDAQ quotations for Topologix units. Wakefield Financial then purchased 2800 Topologix units from Baird Patrick at 15 ¼ ($15.25) per unit and 500 units from Thomson McKinnon at 15 5/8 ($15.625) per unit.

After misleading investors into thinking that there was active trading in the Topologix IPO, they then asked Jack Maffai, a trader at Carr Securities ("Carr"), to "go in and match" Wakefield's bid. A short while later on October 4, 1988, Carr entered quotations for Topologix warrants and common into the NASDAQ systems, in each instance matching the quotation of Wakefield Financial. 5000 Topologix warrants were sold within the first trading minute at 1 1/8 ($1.125) per warrant.

On October 7, 1988, Terri Crescenzi instructed Jack Maffai to raise his quotations again on Topologix warrants to 1/8. The warrants stayed at ($1.125) per warrant for over an hour before Mr. Carr was instructed to raise it again by 1/8. Some of the conspirators, including Morton Kantrowitz, a trader at Nash Weiss & Co. ("Nash Weiss"), were asked to delay going into Topologix securities until the date when the scheme would produce optimum results. All such traders entered their first quotation for Topologix securities into the NASDAQ system on October 4th, 1988.

Keith Friedman, the manager of Wakefield Financials Huntington office, also executed an order with Terri Crescenzi for 5000 Topologix common at 2 3/8 ($2.375) per share for the account of Mr. Emmanuel Boxer on the same date. Mr. Boxer did not know that the price at which his order for Topologix common would be executed had been determined prior to the commencement of trading in Topologix securities. At the same time, Keith Friedman was buying Topologix units from IPO investor at $9.00 per unit, which was the equivalent of $1.50 per share.

While Friedman was manipulating the market in the Topologix IPO from his computers at the Huntington office, Joseph Zaborowski, the Manager of Wakefield's Manhattan offices, and Howard Edrich, of the White Plains office, were purchasing the security from IPO investors at $8.00 per unit, the equivalent of $1.33 per share. Even before the commencement of trading in Topologix securities on October 4, 1988, Ray Koubek, a broker in Wakefield's Manhattan office placed orders with Terri Crescenzi for 26 investors at 2.3/8 ($2.375) per share.

George Palefsky, a broker in Wakefield Financials White Plains office, did the same thing in the accounts of Harry Mincin, Darren Lezday and Vincent Martucci. Mr.

Palefsky would later boast in a taped conversation that he had taken people out of Topologix unit at 8 ½ ($8.50) per unit, "so that you could get stock at a decent price." Kenneth Stoops, a broker in Wakefield White Plains office, also sucked in Ms. Rita Barett for 4000 Topologix common at 2 ¼ ($2.25) per share on October 4, 1988. Mr. Gerald Greenspoon, another investor, also suffered the same ordeal, but for 5000 Topologix common at 2 ¼ ($2.25) per share in the hands of Arthur Goldstein, a broker in Wakefield Financials' White Plains office on the same day.

William Matchneer, an IPO investor whose account was also handled by Arthur Goldstein lost $4,500 within the first minute of trading. Others, two of whom have requested that their names not be mentioned in this dissertation, lost over one million dollars within the first hour of the trading day.

The impact of the scheme was even more severe on investors like Norman Kaufman and Eli Anker who saw their hard earned savings disappear on October 4, 1988, as a result of the unauthorized trading that Theresa Fiorillo, a broker in Wakefield's Manhattan office, conducted in their accounts. Besides promoting Topologix securities, six of Wakefield's representatives offered investment in what was termed a "roll program" or letter of credit program. The investors were told that the program was highly lucrative and highly leveraged. They also told investors that their funds would be combined with other funds and deposited into a secured account held with an international bank, which was handling the transaction.

Investors were also led to believe that there was an ongoing relationship with several "prime banks" and that the instruments purchased and leveraged would be scrutinized by two separate banking entities prior to every transaction. Many investors subscribed, only to realize that they were enriching members of the Russian organised crime and the five Italian crime families in New York. This scheme was especially unique because although it was initiated by Russians-Jews and Albanians connected to Russian organised crime, invitation was extended by George Kevorkian and Keith Minella to the five Italian-American organised crime families in New York to partake in the scheme. This was a strategic decision for alliance formation.

The investors were recruited through a multi-level marketing system in which investors were encouraged to recruit other investors. Most of the investors were recruited by telephone, some through facsimile delivery, while others were recruited through the Internet and other computer networks, which they were surfing to look for good deals.

The firm's online customers were induced to purchase these securities through series of "boiler-room" sales practices, and misrepresentations that the firm had inside information about new issues that were soon to be announced. Some of their representatives persuaded people to purchase Topologix and other stocks because their value will reach certain targets within a few days. They then artificially inflated the prices of the stocks and misled investors into believing that the firm representatives were not earning any compensation on purchases of these securities by clients. When potential investors requested the firm's prospectus, they were told that there was no prospectus available relating to these securities. Once these customers were duped into making the purchases, they were then prevented from selling the securities. Several of the investors who insisted on knowing the status of their sell orders were told that the orders had been executed, when in fact, they were not.

By the time the NASDAQ's system picked up the scheme in the late afternoon on October 4th, 1988, hundreds of investors have lost over $100 million. The entire Wakefield scheme cost investors almost half a billion dollars, a substantial reward for an operation that lasted only twelve months. The entry of organised crime into the financial sector of the economy and the joint- partnership model that was applied in the HealthTech stock scam may further cast some light on the motivations and evolving nature of organised criminality.

THE HEALTHTECH INTERNATIONAL STOCK SCHEME

HealthTech International Inc. ("HealthTech") was an organised crime sponsored corporation organised under the laws of Nevada, with its principal place of business in Mesa, Arizona. HealthTech's common stock and warrants were traded publicly on the National Association of Securities Dealers Automated Quotation system ("NASDAQ") small-cap market. Meyers Pollack was a brokerage firm registered with the United States Securities and Exchange Commission (SEC).

BACKGROUND INFORMATION ON THE HEALTECH SCHEME

The firm was headquartered on the 91st floor at One World Trade Centre in New York City. Beside the firm's main office at the World Trade Centre, Meyers Pollack also operated several branch offices that were registered with the SEC, including one that was located at 3333 New Hyde Park Road, New Hyde Park, New York, and a branch office at 100 Wall Street, New York.

The HealthTech International fraud scheme was carried out primarily by the New York's Genovese and the Bonanno crime families. The principal individuals who carried out the stock scheme were Michael Ploshnick, Shell Ploshnick and David Namer.

Rosario Gangi was a "Capo regime" in the Genovese Family. Frank Lino was a "Capo regime" in the Bonanno Family.

Ernest Montevecchi was a "soldier" in the Genovese Family who was a member of the crew that reported to Rosario Gangi. John Cerasani was a "soldier" in the Bonanno Family. Eugene Lombardo was an associate of the Bonanno Family. He reported to Frank Lino. Eugene Lombardo was president of N&A Promotional Services, Inc., a consulting firm that was implicated in the scheme.

Claudio Iodice was president of Equities Consulting Group Inc. ("Equities Consulting"), a consulting firm.

Irwin Schneider was secretary of Josh Alexander Associates Inc. ("Josh Alexander"), a consulting firm. Mr. Schneider also was the secretary of N&A.

Gordon Hall was HealthTech's Chairman and Chief Executive Officer.

Joe Kirkham was HealthTech's Senior Vice-President and President of HealthTech's Medical Operations Division.

Jonathon Lyons was licensed by the National Association of Securities Dealers as a registered representative and was employed at the Meyers Pollack New Hyde Park Office. Lawrence Schneider was licensed by the NASD as a registered representative and was employed at both the Meyers Pollack New Hyde Park Office and at the Meyers Pollack office located at 100 Wall Street.

Arnold Schneider was licensed by the NASD as a registered representative and was employed at both the Meyers Pollack New Hyde Office and the Meyers Pollack 100 Wall Street Office.

Sal Taddeo worked at the Meyers Pollack New Hyde Park Office and at the Meyers Pollack 100 Wall Street Office. Mr. Taddeo also helped finance the Meyers Pollack 100 Wall Street Office. He was not a licensed or registered representative.

Mike Motsykulashvili was licensed by the NASD as a registered representative and was employed at both the Meyers Pollack New Hyde Park Office and the Meyers Pollock 100 Wall Street Office.

Thomas Scarpaci was licensed by the NASD as a registered representative and was employed at the Meyers Pollack 100 Wall Street Office.

Phil Defonte assisted Lombardo and lodice in negotiating with HealthTech with respect to the issuance of HealthTech securities to the defendants.

INDICTMENT OF THE HEALTHECH FRAUDSTERS

On November 27th, 1997, Mary Joe White, then U.S. Attorney for the Southern District of New remarked during a news conference that "Mobsters booted from the Fulton Fish Market set their sights on the stock market—and joined forces with brokers and execs to make a killing in a massive pump and dump scheme." Nineteen people were indicted, yesterday in the scam, in which the penny-stock for a health-club company called HealthTech International was artificially inflated and sold at a huge profit. She added: "Members of organized crime joined forces with unscrupulous stock promoters and officers of a public-trading company, infiltrated a registered broker-dealer and used threats of extortion and violence as part of their scheme to manipulate stock." Some of these mobsters that the then U.S. Attorney for the Southern District of New York was referring to were displaced from traditional organised activities such as gambling and labour racketeering due to strict liability for voluntary participation in racketeering offences under the RICO statute. Others began moving out of traditional organised crime rackets due to the heavy enforcement efforts by the Giuliani administration of organised crime controlled fish and construction markets in New York from 1994-2002 into home repair scam and securities fraud. The defendants in the Healthtech case included four members of the Bonanno and Genovese crime families, six brokers from the Manhattan firm Meyers Pollack and Robins, and two top officers at Mesa, Arizona based HealthTech" (New York Post, November 27, 1997, Page one).

As part of this research project, sensitive data on the arrests, prosecutions and convictions of organised crime members were gathered from the NYPD's Organized Crime Investigation Division, and from the FBI. In Figure 3 and Table 3 below, a quantitative analysis was conducted on the type of offences that New York's organised crime members committed before and after the enactment of the RICO Statute in 1970. A total of 116 senior members of New York's five Italian-American crime families, and the offences for which they were charged and convicted between 1948 and 2002 formed the basis of the analysis. The offence categories were collapsed into two groups, namely securities fraud and interpersonal crimes. All stock related white-collar offences were put in the securities fraud category, while all interpersonal crimes, such as robberies, larcenies, burglaries, drug distribution, murders and other traditional organised crime offences were collapsed into the interpersonal crime category. The result of the analysis shows that indictment of members of traditional organised crime families for securities fraud increased as more of them moved in on the stock market, while arrest and prosecution of organised members for racketeering activities declined significantly after the RICO

Act of 1970 went into effect. Before the RICO statute was enacted, all the organised subjects in this study were charged for committing traditional non-white-collar related offences (interpersonal crimes). After prosecutors began charging organised crime members under the RICO statute in 1981, 60.2% of the same subjects were charged for securities frauds whereas only 39.8% of the organised crime members received indictments for interpersonal crimes after 1981 (Jacobs 1999).

THE SCHEME TO MANIPULATE HEALTHTECH SECURITIES

The HealthTech International stock scheme which cost investors over one hundred million dollars in losses was initiated in December 1996, when Eugene Lombardo, Irwin Schneider, and Claudio Iodice entered into an illicit agreement with Gordon Hall, the Chairman and Chief Executive Officer of HealthTech. The terms of the illegal agreement stipulated that Lombardo, Schneider, Iodice and others would be paid with HealthTech securities in return for manipulating the price and volume of HealthTech securities. According to trial testimonies, on January 2, 1997, Lombardo informed Mr. Schneider that the agreement with Hall provided that: “If we get the stock to $3.00, we get 100,000 shares.” Following the agreement, Lombardo, Schneider, and Iodice began to artificially increase the share price and volume of HealthTech common stock by encouraging registered representatives under their control to sell shares of HealthTech common stock to their clients.

In January 1997, Lombardo met with Lyons, who operated the Meyers Pollack New Hyde Park Office. The purpose of the meeting was to enlist the help of personnel who worked with Lyons as registered representatives at the firm’s New Hyde Park Office in manipulating the market for HealthTech securities.

As part of the scheme, registered representatives and others at the Meyers Pollack New Hyde Park Office began to induce investors to purchase HealthTech securities using a series of "boiler-room" sales practices. Some of the sales practices that were used by Pollack's representatives include (1) unauthorized trades; (2) failure to execute trades; (3) unsuitable recommendations; (4) misrepresenting to customers that Meyers Pollack registered representatives had their own investments in HealthTech. Other methods had to do with misrepresenting to customers that they would reap profits in excess of 400% within three months if they invested in HealthTech securities; and (6) failing to disclose to customers the strike price of the HealthTech warrants.

The court records showed that the representatives were heavily rewarded for their role in the scheme and for selling HealthTech securities to their retail clients. These incentives led Pollack's representatives to further induce investors to purchase HealthTech securities. The cold-calling technique worked, and in the month of January 1997 alone, Meyers Pollack's sold over 387,200 shares of HealthTech common stock. These sales amounted to 38.94% of all retail customer purchases of HealthTech stock during this period.

By December 1997, the trading volume of HealthTech common stock had increased significantly from 642,845 shares traded in December 1996 to 2,314,156 shares. In one day alone, on January 2, 1997, HealthTech's trading volume increased over 250% compared to the prior day's trading, from 45,081 shares to 172,600 shares traded. The closing price of HealthTech common stock also increased from $.875 on December 31, 1997, to $1.34 per share on January 2, 1997. During the month of January 1997, HealthTech common stock reached a high of $2.50, a low of

$.875 and closed at $2.375. By contrast, for the month of December 1996, HealthTech common stock reached a high of $1.43, a low of $.625 and closed at $.875.

There were no news stories of corporate developments relating to HealthTech during January 1997 to account for these price and volume increases, nor did prices or volume increase in the market generated during that period in such a way as to account for these price and volume increases. The advertising approach as a tool for the fraud scheme came several months later.

The success of the scheme led Gordon Hall to give 100,000 shares of HealthTech common stock, without charge, to Lombardo's consulting firm on January 8, 1997 as part of the conspiracy. The seven-month scheme continued through February 1997. During the month of February 1997 alone, a total of 264,200 HealthTech shares were sold to investors. These purchases amounted to 27.47% of all retail customer purchases of HealthTech stock, and propelled the stock to a high of $2.813, and a low of $1.75 during that period. The stock closed at $2.125 on February 13, 1997, and on the same day, N&A received an additional 100,000 shares of HealthTech stock at the direction of Mr. Hall.

THE COLLAPSE OF THE HEALTHTECH SCAM

On February 20, 1997, Equities Consulting and its owner, Claudio Iodice and Josh Alexander Consulting each received 500,000 HealthTech warrants as partial payment for their role in the swindle. But neither Lombardo nor Lyons, who individually wanted more control over the scheme, was satisfied. So on February 21, 1997, Eugene Lombardo enlisted the help of Mr. Iodice and Irwin Schneider in an effort to gain increased control over the activities at the Meyers Pollack's New Hyde Park Office. The plot backfired when Jonathan Lyons indicated that he also wanted the brokers controlled by Lombardo and others, including Lawrence Schneider and Arnold Schneider, to leave the Meyers Pollack New Hyde Park office. The Lombardo crew in turn demanded that all the brokers controlled by Jonathan Lyons be forced out of the firm. The quest for power and control of the brokerage firm led to violence on February 23, 1997. Several violent confrontations between John Cerasani, Eugene Lombardo, Claudio Iodice, Irwin Schneider and Mr. Lyons soon followed.

The dispute over who would control the Meyers Pollack New Hyde Park Office led to more confrontations and work stoppage at the firm on February 26, 1997 between the factions loyal to the Bonanno Family and the crews who were working for the Genovese Crime Family. The controversy at the New Hyde Park office lasted over three months before an agreement between Frank Lino, a "Capo regime" in the Bonanno Crime Family and Rosario Gangi of the Genovese Family helped resolve the dispute. One of the brokers who were dissatisfied with the way the dispute was resolved eventually became a confidential informant. The Lombardo faction prevailed and sought a new office space at 100 Wall Street, in the heart of New York's financial centre, rather than continue their operations from the New Hyde Park office. The office space at 100 Wall Street was acquired in April 1997 with the help of Rosario Gangi. Less than a week after the Lombardo's group moved to the Wall Street office space, the manipulation of HealthTech common stock and warrants became the only business conducted at the Wall Street office. During the first three months following their relocation, the Lombardo crew entered the high bid for HealthTech warrants 52% of the time, and was responsible for 17% of the up ticks or new subscription of that IPO's warrants. Their aggressive cold-calling tactics pressurized Meyers Pollack retail clients into purchasing 4,770,260 HealthTech warrants, a total of 35% of all retail customer purchases during that period.

The up ticks were even more staggering in the month of April 1997, when Meyers Pollack's retail clients purchased 3,042,800 HealthTech warrants. These purchases amounted to 68.41% of all retail customer purchases of HealthTech warrants for that month. As a result of the extraordinary up ticks, Eugene Lombardo and Claudio Iodice began to express concerns that their strong control over HealthTech warrants could bring about law enforcement scrutiny. In a taped conversation between Lombardo and Iodice on May 8, 1997, Lombardo noted that there might be a "dominance and control problem" with HealthTech because "If we had $5 million under management, HealthTech would account for $4 million." The fact that the trading volume of HealthTech warrants increased over 1000% in April 1997, from 700,165 warrants traded in March 1997, to 7,710,192 warrants traded in April 1997, led to even more worries. The trading price of HealthTech warrants also increased from a daily average trading price of $.322 in March 1997 to $.551 in April 1997.

With respect to HealthTech common stock, from April 1, 1997, through April 30, 1997, Meyers Pollack's retail customers purchased 175,500 HealthTech shares of HealthTech stock. These purchases amounted to 31.21% of all retail customer purchases in HealthTech stock during this period. On April 14, 1997, Meyers Pollack received 600,000 HealthTech warrants issued by HealthTech at the direction of Gordon Hall. The warrants were delivered pursuant to a fictitious "consulting" agreement between Meyers Pollack and HealthTech, and were later sold by Meyers Pollack to the firm's clients. The scheme continued through May 1997. In that month, Meyer's Pollack's retail clients purchased another 2,429,400 HealthTech warrants. The firm's purchases amounted to 86.24% of all retail customer purchases in HealthTech warrants during the period.

In May, 1997, the trading price of HealthTech warrants again increased from a daily average trading price of $.551 in April 1997 to $.611 during the of May 1997. In the month of May alone, the firm entered the high bid exclusively for HealthTech warrants 19.45% of the time, and was responsible for 60% of the up ticks in HealthTech warrants.

With respect to HealthTech common stock during the month of May 1997, Meyers Pollack's retail customers purchased 407,650 HealthTech shares. These purchases amounted to 39.96% of all retail customer purchases in HealthTech stock. As trading grew at the Meyers Pollack 100 Wall Street Office, more disputes erupted between the various "crews" of brokers that were affiliated with the different crime families. Some of the Gambino brokers were resentful because the scam was led by stock-traders affiliated with the Genovese and Bonanno crime families. On May 7th, 1997, a broker who was associated with the Gambino crime family indicated to Eugene Lombardo that one of the Genovese-sponsored brokers was being suspected of providing information about the scheme to law enforcement authorities.

On May 9, 1997, Rosario Gangi and Ernest Montevecchi, members of the Genovese Family, and Frank Lino, a member of the Bonanno Family, along with members and associates of the three other crime families met with Eugene Lombardo to discuss the removal of the broker, a registered informant with the NYPD Detective Bureau. Although the broker denied the allegation, at the end of the meeting, it was resolved that he be removed from the 100 Wall Street office. His leg was broken as a warning, before his dismissal on the same day. During the first two weeks of June 1997, Meyers Pollack's retail clients' purchase of HealthTech warrants rose to 495,800. These purchases amounted to 83.45% of all retail customer purchases in HealthTech warrants. Their significant price leadership in HealthTech warrants from 1996 to November 1997 amounted to an 82.73% control. Just before the firm collapsed in 1997, Meyers Pollack conducted offerings of $13.9 million in the debt securities of three other separate entities, Aircraft Leasing and Funding Co., Ray and Ross Transport, Inc. and Northstar Leasing Co. All three offerings were sold to the public on the basis that the notes were fully insured, with no risk to the investors who purchased them. These representations were false, and the purported agreement with various insurance companies, which Michael Ploshnick, Shell Ploshnick and David Namer provided to the investors associated with the offerings were outright forgeries.

The consistent up tick and the realization that the investigation may have been compromised led the authorities to pull the plug on the scheme on November 26th, 1997.

It is quite possible that the authorities intervened because allowing it to continue may have proved more harmful to the investing public and generated more criticism and even legal liability for the agency from angry investors and the media. In securities fraud, there is a relatively low level of violence and physical harm, although there were several violent episodes against customers as well as possible snitches in the HealthTech scheme (Clarke 1990:20).

Landesco (1968) provides an interesting analysis of the use of instrumental violence to stabilize illegal markets during the 1920s and the 1930s. Reliance on organised crime to maintain order and continuity in fictitious securities trade created dependencies on the part of both the rogue brokers and their organised crime counterparts. This symbiotic relationship eventually served as the catalyst that enabled organised crime to gain more control of illegal stock trades and acquire a greater access into the financial industry.

Anderson (1978) argues that a type of differential opportunity prevails when it comes to investing the proceeds realized from various forms of illegal activities. In the legitimate business sector, growth in profits translates into a cash flow that demands reinvesting for further growth. In underground economies on the other hand, expansion is not easily accomplished. Control of territories in the underworld is closely tied to the incumbent's ability to control his opponents through intimidation and threat of physical harm. With such fierce resistance to expansion, organised crime families in New York and their Russian-origin counterparts turned to the stock market as an alternative investment vehicle. The Russian-origin criminals bring a trans-national dimension and a degree of sophistication that Italian-American crime families in New York appear to lack, but the Russians lack access on Wall Street.

In their work on "Crimes of the Middle Classes" Weisburd, Wheeler, Waring and Bode (1991) argued that the most important factor in the commission of the most costly and damaging white-collar crimes was found to be access to organizational resources. The Italian-American organised crime members were necessary, and even instrumental in providing the Russian-origin fraudsters with the initial access to some Wall Street entities and partners.

But unlike their Italian-American counterparts, Russian-origin fraudsters on Wall Street direct their scams mainly against corporations and institutional victims. It is important to note that the public considers offences like insider trading and stock manipulations less harmful when these crimes are directed against businesses and institutional victims. But despite public perceptions about institutional crimes, the impact of stock schemes on businesses and individual investors are lasting.

THE COMMISSION CASE

On June 15th, 2000, The New York Daily News reported that "Members of the New York's five Mafia families banded together in an unprecedented joint venture to get a $50 million piece of the crazed dot-com bull market. In raids across the city and nation, more than 100 defendants were arrested in what authorities described as the largest securities fraud take down in U.S. history. In 16 indictments and seven criminal complaints, federal prosecutors charged 120 people, including 11 members and associates of New York's organised crime families, 57 stockbrokers, a hedge fund manager, and two top executives of Ranch 1 grilled chicken fast-food chain. More than 600 FBI agents carried out the arrests from New York to California." (New York Daily News, June 15, 2000 online edition #70088).

The article, allegedly quoting one prosecutor noted that "When the Mafia sets up shop on Wall Street, fists and bullets can start flying." The revelations of the

Sopranos-type violence emerged last week as prosecutors began to describe what has been called the biggest crackdown on securities fraud in history. The stock scams mark the first time all five New York crime families have gotten together to get a piece of the technology-driven Wall Street boom, Manhattan U.S. Attorney Mary Joe White said" (New York Daily News, June 18, 2000 Online edition File #70395). The significant thing about this particular fraud scheme, in the words of Mary Jo White is that the "case signalled unique cooperation among five Mafia families in a single Wall Street venture. The greed and reach of this racketeering enterprise knew no bounds."

In this particular case, the fraudsters used several fraudulent sales techniques and pitches to fraudulently induce members of the public to invest with them by promising to pay a virtually risk-free annual return of up to 300%. The defendants represented that they could pay such extraordinary rates of return because the proceeds of the investment sales would be deposited in a "special" Mexican bank account controlled by them, which they claimed generated investment returns or earned interest of approximately 1020% per year. Some of the investors they solicited were of modest economic means and were unsophisticated and inexperienced in financial matters.

The mobsters also tampered with the securities of technology ventures by pumping and dumping Internet-based stocks, using "boiler-rooms" that ripped off hundreds of investors, including the elderly. When SEC and its task force arrived at the numerous boiler-room offices, approximately 200 employees were in the process of soliciting investors to purchase the offering of a fictitious Internet company. According to the SEC, the cold-callers told investors that the company is an Internet service provider, which was poised to enter the on-line market in Atlanta, Houston, Philadelphia and New York through a joint venture with a supposedly successful Internet service provider in Arizona.

The purported joint venture partner was merely a shell company with no assets and which operated out of a one-room office in lower Manhattan. The offering materials contained baseless financial projections predicated on the unfounded venture.

Contrary to what they were promised, the investors received no interest in an established on-line business. Prosecutors who worked on the case revealed that the brokers who failed to pass on enough money from the scheme to their mob overseers were severely beaten, and on one occasion, a Luchese crime family enforcer allegedly conspired to kill a suspected mole in their ranks.

According to Mr. Barry Mawn, former head of New York's FBI office, the mobsters implicated in this racketeering case applied the same violent techniques that enabled organised crime to gain control of the construction, garment and carting industries in New York. "It shows us again that organized crime has sought to regroup and tried to infiltrate the securities market. When the mob enters the new world of white-collar crimes, it brings along traditional tools of the trade", he said.

According to court documents, not only did the Mob provided 25% of the start-up capital but they also planted two of their lawyers and three accountants at the sham brokerage firm to protect their investments. The firm at the centre of the joint commission scams was a company simply known as "DMN Capital Investments," a fraudulent financial services firm based in Hanover Square, in down town Manhattan that the U. S. Attorney's office described as "a real fraud magnet."

Those who were charged in the indictment include Robert Lino, a Bonanno crime family "Capo regime", James Labate of the Gambino crime family, Salvatore Piazza, an alleged Bonanno crime family associate, Robert Gallo of the Genovese crime family and Michael Grecco, an associate of the Colombo crime family. Other defendants in the case include John Black Jr., an associate of the Luchese crime family, Anthony Stopoli, a Colombo crime family soldier, Frank Persico and Vincent Langella. Mr. Sebastian Ramette, the Chief Executive Officer of Ranch1 Fast Food Chain, and James Chikara, the food chain's Vice-Chairman were also indicted in the scheme.

During the civil trial preceding the criminal complaint, the Securities and Exchange Commission alleged that, in some instances, the defendants told investors and potential investors that their accounts would be used to engage in the trading of instruments referred to as "Prime Bank" securities. Nine of the cold-callers targeted persons active in religious organizations and allegedly encouraged potential investors to take extraordinary steps to obtain money to invest, including obtaining second mortgages on their residences and procuring large cash advances against their credit cards.

According to the criminal indictment, the gangsters recruited brokers to inflate the value of companies in which they had secret ownership interest. Several investors also subscribed to offerings in a fictitious company that they claimed had recently earned exclusive rights to drilling ten oil fields in Dubai, the United Arab Emirates. The brokers also paid stock promoters to fraudulently manipulate certain micro-cap securities on Internet trading sites. The spoils from the scheme were then passed on by the brokers to the crime families with which they were associated. Most of the funds transfer to organised crime families took place at "Joseph's Ristorante" near Wall Street, and at the upscale "St. Regis Hotel" in Midtown, Manhattan, according to unsealed grand jury deliberations.

The grand jury report also showed that seven of the cold-callers used the same hard- selling tactics that were applied by Gene Block of Durham, North Carolina and Robert T. Riley of St. Louis, Missouri from 1996, until April 1997. The Honourable Judge Reginald Lindsay of the U.S. District Court for the District of Massachusetts entered a final judgement against them on April 21st, 1997. Prior to that, Block and Riley had already offered and sold thousands of unregistered and fraudulent investment programs through advertisements on the internet by promising returns as high as 200% to 420% annually. Block and Riley also falsely told the investors that the funds would be invested in risk-free, high-yield programs and that the initial investment was guaranteed against loss because a "Prime Bank Guarantee" would be used as security for the transaction.

The schemers in the commission case used the same sales pitch. It should be noted that there is no legitimate financial instrument known as "Prime Bank Guarantees."

Another scheme which organised crime applied in the commission case was "free-riding." "Free-riding" is a stock scheme, which involves purchasing stock in an account at one brokerage firm, without having the funds to pay for it, and financing the purchase by selling the same stock through another brokerage firm on the same day.

Free-riding scheme first caught public attention during a judicial proceeding that was initiated by the SEC in the U.S. District Court for the Southern District of New

York against Mr. Matt Hansen and Mr. Fergus Sloan in 1997. In that civil action, it was disclosed that from January 1985 through July 1989, Hansen and Sloan opened at least 250 accounts at approximately 100 brokerage firms in about 76 assumed names to conduct a "free-riding" scheme. The scheme reaped over $4 million in profits for Hansen and Sloan, but caused hundreds of thousands of dollars in losses to the brokerage firms through which they traded, when they refused to honour certain unprofitable stock transactions.

Between December 1989 and November 1993, Hansen and Sloan opened over 645 cash accounts at more than 62 brokerage firms using about 40 assumed names to carry out a free-riding scheme. During that four year period, Hansen and Sloan traded over $260 millions worth of securities in cash accounts, shifting the risk of loss to unwitting brokerage firms. This scheme caught the attention of organised crime fraudsters who were involved in the commission case, and they exploited this scheme in 18 of their transactions, netting over $3 million dollars from free-riding alone.

The perpetrators also used a telemarketing campaign to sell non-existent insurance annuity contracts and limited partnership units to investors. They also raised over $2 million from hundreds of investors through the offer and sale of interests in non-existent limited partnerships that they claimed invested in low-income housing. In another scheme, the organised crime controlled brokers held a substantial long position in a contract and profited from delivery of the more valuable security.

They deliberately misled a commodities trading firm that their concern was short on a contract and needed the cheapest-to-deliver security used as collateral in those transactions returned to them to meet their own delivery obligations under the contract. The rogue traders then secured agreements from the commodities trading firm not to re-lend the security to the repossess market. Through these material misrepresentations, the rogue traders removed from the market a significant quantity of the cheapest-to-deliver security, and profited by the receipt of the more valuable security.

The fraudsters succeeded in misleading other investment firms and individual investors into dumping millions of dollars into fictitious companies by issuing press releases and filing false reports with the SEC. These press releases contained misrepresentations of material fact and misleading statements about their company's assets and business prospects, including oil and gas prospects in Pakistan.

Some of the company's whose stocks were sold to the public were woefully under-funded entities, which purported to do everything from producing software to operating amusement parks.

The conspirators in this case also manipulated the price of numerous stocks, which were traded on the Bulletin Board System of the National Association of Securities Dealers. As a result of this false and misleading information, the price of some of the stocks increased from 80 cents to $8.00 over a five-week period, and remained at artificially high levels until FBI agents arrested them on June 15th, 2000.

As part of the scheme, investors were also told to invest in a company that the defendants claimed would acquire, own and operate automatic teller machines. Automatic telier-machines generate revenue through transaction fees charged to customers who use them. The cold-callers told their victims that the projected return to investors could be over 176% in the first year and 203% annually in the second through the seventh year. But almost all of these companies were empty shells, including one that claimed to run day-care centres from an office on Avenue U in Brooklyn, New York. Although that firm had only $2,000 in its bank accounts, it was able to sell enough stocks to claim assets of $90 million before collapsing. None of the investors, including a widower who invested her husband's death insurance payment recovered their hard-earned income.

The abrupt closure to the investigation and the sudden arrests of the gangsters came on June 15th, 2000 following a tip from an informant in the FBI's witness protection program that they were about to extend the scheme into raiding the pension funds of the "Production Workers Local 400 Union" and those of the "Detectives Endowment Association (DEA)," which represents NYPD detectives. Detective Gardell, an NYPD detective and treasurer of the DEA, who retired just one week before the arrests, thereby safeguarding his pension, was also charged with the organised crime members.

In the months leading up to the arrests, FBI agents made several stock purchases, and placed numerous bugs at the Hanover Square office of DMN Capital. In June 2001, almost all the defendants pled guilty to various counts of securities fraud and enterprise corruption, and received concurrent prison sentences for what the media and government agents referred to as one of the worst cases of securities fraud in the history of the United States. But it is not uncommon for the media to describe such cases in those terms, usually quoting police officials or prosecutors because corporate wrong doings pose more serious threats to Wall Street investors than securities scams by organised crime groups.

THE LEGITIMATE RACKETS

Corporations violate securities regulations on Wall Street because the cost of rule violation to the offending firm pails in comparison to the benefit of rule violation. The case of the Enron Corporation, a Texas-based oil company and unofficially financial services company, underscores the sweeping effect of alleged corporate fraud on financial institutions and individual investors and also places in perspective the sorts of frauds examined in this thesis. Banks, companies, private partners and investors are at risk of losing $21 billion allegedly due to accounting fraud and fraudulent schemes that led to the collapse of Enron. In fact, the manipulative accounting schemes of Arthur Anderson then one of the largest accounting firms in the world, contributed not only to the collapse of Enron and WorldCom but also to itself.

The corporate scandal that followed the Arthur Anderson saga alerted both investors and the general public to the dangers and challenges facing the financial industry. The corporate scandals on Wall Street in 2001 coincided with one of the longest bear market in the American economy since the Great Depression in 1929. For the most part, professional fraudsters without any confirmed link to traditional organised crime executed the Enron, ImClone, and WorldCom scams.

According to a New York Post report on Friday November 30th, 2001, Enron's demise would cost J. P. Morgan Chase $900 million, Citigroup $500 million, Deutsche Bank $80 million, while Duke Energy Corporation, Williams and Companies, and the Dresner Corporation will each lose $100 million. Several pension and retirement funds were also affected. The New York State Common Retirement Fund alone lost $60 million, enough to cover entire pension cheques for hundreds of retirees.

Thousands of retirees in the United States are now facing an uncertain economic future following the collapse of Enron (Altman 2002b; Morgenson 2001a). Between September 2001 and November 2001, the firm's stock went from being one of the most desired and most traded stocks at $80 per share and a market value of $70 billion on the New York Stock Exchange to a penny stock. A BBC News article number 2145193 (online edition) of Tuesday July 23, 2002, reported that the shares of Citigroup fell about 12% as speculation mounted over the role the Bank and other financial institutions may have played in the collapse of Enron.

Similar corporate scandal involving ImClone, Adelphia, Dynergy, Tyco International and WorldCom, were uncovered in 2001 and 2002. On Friday June 14, 2002, a federal jury in Houston, Texas found Arthur Anderson guilty for interfering with justice by shredding Enron documents (Eichenwald 2002d). The following day after the verdict, Arthur Anderson announced the lay-off of over 7000 of its employees worldwide (Many of them however, took up employment with other firms. Some employees who were not implicated in the Enron scandal simply took their honed fraudulent skills to other accounting and financial institutions). In response to series of corporate scams, the SEC, under the agency's then Chairman, Harvey Pitt, expanded its investigations into the financial status of other major corporations operating on Wall Street, commonly referred to as Fortune 500 companies. Mr. Pitt resigned in 2002 and was replaced by Mr. William H. Donaldson, the current SEC Chairman, who is continuing his probes into the activities of financial houses on Wall Street, under competitive pressure from the Democrat New York State Attorney-General Elliot Spitzer.

The impact of these corporate schemes and financial scandals on investors and the involved financial firms were enormous. On July 7, 2003, the Honourable Judge Jed S. Rakoff, of the Southern District of New York entered final judgement against WorldCom in the amount of $2,250,000,000 ($2.25 Billion). Considering that the SEC charges against WorldCom alleged that the firm defrauded investors to the tune of $9 billion, the civil penalty approved by Judge Rakoff on July 7, 2003 will be inadequate to fully compensate all the victims of the WorldCom scheme (although many will agree that there is no point in levying fines that cannot be paid. Some of the victims also sought remedy through civil litigation).

As part of the settlement, which is posted on the SEC website, "investors who believe that they may be eligible for a distribution from the judgement against WorldCom should know that under the distribution plan outlined by the SEC on June 6, 2003, if you purchased WorldCom securities after the company's announcement of its accounting fraud on June 25, 2002, those securities will not be eligible to receive victim compensation."

Another major impact of the financial scandals of 2001 and 2002 was the enactment of the Federal "Fair Funds for Investors Act" in 2002, which stipulates that investors be compensated "exactly" to the tune of their loss, if feasible, and that fraudulent firms be fined up to twice the amount of the loot. The assumption here is that "the firm" will be there long enough to repay: that is certainly not the case with the pump and dump schemes. Under the Act, maximum jail sentence for wire and mail fraud will double from 10 years to 20 years, while securities fraud will carry a 25-year maximum sentence as opposed to the 15-year maximum sentence under the old statute.

But not everyone was wholly convinced that the bill is much more than a political gesture to restore public confidence in the financial market. The Congressional Democratic Whip, Congresswoman Nancy Pelosi noted that most of the provisions in the Act will only lead to "cosmetic rather than real change," and that the sponsors of the legislation do not expect that securities fraudsters will be given the 25-year maximum prison sentence required under the statute. Her predictions appear to be correct because in June 2003, the Chief Executive Officer of ImClone, sentenced under the new guidelines, was given a 7 years and 6 months prison term, although his gain from the ImClone scheme exceeded the $50,000,000 threshold required for the maximum prison-term under the Sarbanes-Oxley Act. He could be released in four years for good behaviour under the parole provisions of the statute.

As part of the government's approach to dealing with future securities violations, on May 1, 2003, the U.S. Sentencing Commission submitted revised sentencing guidelines for corporate securities violations to the U.S. congress. The new guidelines, which became effective on May 30, 2003 now stipulate that offences involving more than $50,000,000 should carry a maximum penalty of 20 years as opposed to the over $200,000,000 ($200 million) threshold for the maximum sentences under the previous guidelines.

MEDIA AND PUBLIC ATTITUDE TOWARD LEGITIMATE RACKETS

Are the news media reluctant in reporting fraud and if so, of what types and why? The ambivalent reaction of the public to securities fraud is well reflected in the way this form of white-collar crime is treated by the News Media. Box (1983) lamented that the public, including some criminologists, does not perceive white-collar crime as a pressing, serious social problem. Scandals, on the other hand, such as the collapse of the Bank of Credit and Commerce International do sell papers (Levi 1987a: 17).

To a seasoned journalist, a successful news story is one that is captivating, immediate, dramatic, simplified, and capable of being personalized (Chibnall 1977). Whereas murder, rape, armed robbery and felonious assault contain many of these elements, securities fraud does not. Even criminal and civil litigation for securities fraud tends to last for many months and evidence often involves the interpretation of financial accounts and an uncommon terminology with which the average juror is unfamiliar. These hurdles make white-collar crimes more expensive and cumbersome to fully report (Levi 1987a).

Stories about the double homicide in a triangular love affair in Brooklyn in October 2002 and the armed robbery at "Wendy's", a fast food restaurant in Queens on May 24th, 2000 in which five Wendy employees were killed are more likely to receive extensive coverage than stories about stock fraud. The details of the homicide at Wendy's restaurant dominated the front page of all local New York newspapers for three consecutive days, but press releases on Wall Street scandals are routinely reported on either page five or page six of most of the local newspapers in New York, except the Wall Street Journal. Reports about sensational inter-personal incidents and major disasters are also news worthy, even when they are not the products of criminal activities. Such emotional and sensational stories appear to sell Newspapers faster than reports of stock swindles on Wall Street.

Although securities schemes lack the urgent media appeal of violent inter-personal crimes, stock fraud cases are not altogether neglected. For the most part, fraud cases are reported only when they involve millions of dollars, or when a famous person, or a very reputable corporation is the victim or offender. Out of the over 200 Newspaper articles and reports on the stock market that I collected during the period of this research, 98% of the articles involved amounts that were over five million dollars, and only 1% of the articles spoke about little known companies on Wall Street. One implication of this is that large companies can expect more reputational harm that could have a negative consequence on the firms' business transactions with clients, unlike self-liquidated organised crime connected firms which have no reputation to harm.

Fraudulent transactions of less than one million dollars, which is the most common form of stock fraud on Wall Street rarely attract much publicity. The media focus on dramatic incidents, well-known personalities and violence keeps white-collar crime from the front page of news articles, even though white-collar crime is not a new problem (Levi 1987b: 89).

Garofalo (1981:334) observed that "because relatively few people have extensive direct experience with crime, it seems reasonable to assume that the public's mental images of crime, as well as of criminals, victims, and criminal justice are shaped, to a great extent, by the mass media." The public in general tend to have more experience and knowledge of inter-personal crimes than they do of white-collar crime and organized crime. For this reason, the role of the media in shaping public opinion about crime in general is even more significant. Regrettably, "the depiction of crime and violence in the media differ from the reality of crime and violence (Garofaio 1981:339).

Media reports serve more as a process of misinformation than a source for accurate information. Schneider (1990) found that "we are on the way to a communication –conditioned mass- media society in which fiction, fantasy, and the definition of reality assume a greater role than reality itself." In Schneider's view, human interpretation of reality is really societal stereotypes that are defined and reinforced as reality by the media.

Kooistra (1989) suggested that the media often treat crime and violence as entertaining drama, and that they often misrepresent tales, stories, and fables as informative news. The media do this because "Newspapers found that stories about noted criminals helped to sell papers. Magazines, movies, and books found criminals to be profitable topics" Kooistra (1989:127).

In the "Mafia Mystique" Smith (1975) examined the way the media covers organised crime related stories. Smith found that "in the seven year period from the Kefauver hearing in 1950 to the eve of the Appalachian in 1957, there were a total of 19 items in the Times (NY Times) in which "Mafia" was a subject worth citing. In the six-year period from November 1957 to the first public comment by Joseph Valachi in 1963, there were a total of 35 items of "Mafia" significance" (Smith1975: 240-241). In the 1950s, organised crime stories in the NY Times ranged from 5 to 11 articles. In 1963, there were 67 articles, and in 1967, there were 148 articles on the Mafia in the NY Times."

In contrast, "the New York Times index for 1989 had 27 references for Mafia, but 98 for organised crime, and 175 for racketeering and racketeers. The Readers Guide to periodical literature for 1989 had 15 references to Mafia and 17 to Rico. The Guide for 1990 had 2 references to organised crime, 22 to Mafia, and 6 to Rico" (Kenney and Finckenauer 1995).

These results show that although the media fascination with the Mafia was still prevalent in 1990, a new focus on racketeering, the Rico statute, and new areas of criminality was beginning to emerge. This new emphasis was partly due to the government's successful application of the Rico statute against organised crime during the 1990s.

Smith (1975) noted that despite the increasing number of articles on organised crime published in the News Media, there is still a lack of "substantive knowledge or analysis for the popular reader." Media accounts on stock schemes quite often lack details on how people go about the business of defrauding, what tools are needed for stock schemes, and what fraudsters do with crime proceeds. Unfortunately, media reports on organised crime are for "popular consumption, for entertainment, rather than enlightenment" (Smith 1975:182).

In their study on the role of the media in shaping public knowledge about organised crime and white-collar crime, Morash and Hale (1987) came to the conclusion that "crime news generally presents a selective perception of reality. Coverage of organised crime is of particular interest because it shapes not only public but also some academic understanding. News accounts of organised crime activity have a significant influence in academia because; probably more than in any other area of criminological research, they have been accepted as data sources." They pointed out that "the picture of organised crime and violence that is established in the news influence the views of college and university students who often become criminal justice practitioners and policy-makers" (Morash and Hale 1987:130-131).

In their views, news accounts provide inadequate sampling of both illegal acts and actors, since reporters focus mainly on discrete events and individual crimes rather than on organisational dynamics. Morash and Hale (1987) concluded with the recommendation that media reports on organised crime should place more emphasis on "interactions between people." If this dimension is explored, it will help to explain how an illegal activity came to pass. But until media reports on organised crime and white-collar crime become more objective, perceived reality and its conscious creation will remain an important element in understanding the media's handling of the subject of organised crime.

RECRUITMENT INTO SECURITIES FRAUD SCHEMES

Cloward and Ohlin (1960:145) observed that "many lower-class male adolescents experience desperation born of the certainty that their position in the economic structure is relatively fixed and immutable. A desperation made all the more poignant by their exposure to a cultural ideology in which failure to orient oneself upward is regarded as a moral defect and failure to become mobile as proof of it. Having decided he cannot make it legitimately, he cannot simply choose among an array of illegitimate means, all equally available to him" They further noted that neighbourhoods where crime "flourishes as a stable indigenous institution are fertile criminal learning environments.

These environments facilitate the integration of offenders from different age-groups, selected people are exposed to differential association through which tutelage is provided and criminal skills are acquired" (Cloward and Ohlin 1960:148). Since there is a surplus of contenders for these positions, "criteria and mechanisms of selection must be evolved" (Cloward and Ohlin 1960). It is at this juncture that the opportunity for recruitment to criminality and eventually organised criminality occurs.

The criminal community itself plays a key role in the selection process, by providing the early socialization toward organised crime through a process of "cultural transmission" aided by a strong sense of criminal history. In their study of criminal gangs in Chicago, Shaw and Mckay (1972) pointed to this idea of cultural transmission of criminal behaviour through generations living in the "same ecological niches". Shaw and Mckay (1972) then suggested that a kind of criminal apprenticeship take place in this kind of community. The process that evolves from such criminal communities not only provides training but also allows for evaluation of an individual's potential for criminal success by more experienced actors.

Factored in the evaluation and selection process are members' ethnic identities in the case of traditional organised crime. However, in securities fraud operations, ethnic identity does not appear to take centre stage in the selection process, the reason being that traditional members of Italian-American crime families in New York do not possess the expertise or business qualifications needed to execute securities fraud schemes. Licensed brokers, broker-dealers and principals are recruited at bars, casinos, illegal drug spots and at affluent prostitution clubs.

Little wonder, therefore that a single securities fraud case could involve people from various ethnic groups. Such was the case with the Wakefield, Baron and HealthTech stock fraud schemes.

I recognize that most earlier empirical studies on organised crime have pointed to locality relevance as a characteristic of the vast majority of organised crime groups (Reuter 1983, Ianni 1972a, 1974, Chambliss 1978, Potter and Jenkins 1985. However, it is safe to contend that the structure and recruitment criteria of organised crime in securities fraud cases are predicated by the specific form of stock scheme intended, and the manpower needed for its successful execution, irrespective of the conspirators' ethnic identity in most cases.

The displacement (or intended preventative) effects of RICO and other policing methodologies have driven Italian-American criminals out of their historically successful rackets and into some more upmarket crimes for gain in which they have no comparative advantage except their reputation for violence. This is the point that Reuter makes (though not in this context) about the functionality of the reputation for extreme violence (in his case, criminal dispute settlement was the likely venue for this reputation). In most of the scams that were joint-ventures between the Italian-American organised crime and Russian–origin fraudsters, the Italian-American organised crime provided the upfront capital cost of running the scams, while the Russian-origin criminals provided the skills and expertise needed for successful execution of the schemes.

CONCLUSION

Large groups of people, working over vast areas, in a highly visible area such as drug distribution, or prostitution rackets were faced with sweeping enforcement actions in New York during the Rudolph Giuliani Mayoral administration in the 1990s. The challenges they faced in their political and legal environment may help explain why and how organised crime in New York has evolved from a single ethnic network of social relations into multi-national illicit entrepreneurs in the New York City's financial district. The dangers posed by law enforcement in other illicit markets, particularly the severe sentencing guidelines for racketeering under the Rico statute also played a key role in the shift to the securities market. Although organised crime is still engaged in their old rackets, the penetration into the securities market is just one example of diversification in the face of external threat. The way different types of criminal activities are coordinated and managed is impacted and sometimes, modified by the environments within which organised crime operates.

Understanding how these environmental factors provide opportunities and constraints for the organisation of crime is critical to understanding organised crime as a social process. In the securities industry, the constraints from the external environment are not as stringent and unpredictable as those faced by criminals who commit violent crimes. This is why most securities scams, unlike burglary and auto theft rackets, go on for an average of two years before they are either uncovered and shut down by enforcement agents or voluntarily discontinued by the fraudsters to avoid detection, or end naturally for lack of further participation.

All investors, no matter how sophisticated and stock-trading firms can be victims of securities fraud. In fact, many have been victimized. Why then do most cases of securities fraud go unreported? The answer lies partially in the inability of many investors to detect illegal or fraudulent transactions in their account unless the firm goes bust or their losses crystallise. Even some corporate attempt to minimize incidents of employee-orchestrated fraud has had little success. The failure is due in part to employer's lack of relevant expertise and skills to supervise and evaluate work performed by their employees (Shapiro 1990).

But things have advanced since then, with sophisticated software programmes to detect unusual transaction patterns. Investors, even when they are aware that they have been defrauded may not define their loss as criminal, but as poor investment by their representatives. They may be angered by their loss, and may even feel that they should be compensated for their loss by their investment houses. However, they are often reluctant to report the matter to appropriate enforcement authorities, and prefer instead to seek redress through their firm's internal mechanisms for resolving disputes. Many investors choose not to report to the appropriate agency when they have been victimized, not because they do not understand the rights pertaining to their investment, but because most are unaware of specific details of securities regulations. Some fail to report because they do not know that some of these regulations are enforceable criminally. Other victims of securities fraud may fail to report their experience because they attribute the reason for their victimization to themselves, and accept the fact that they should have paid closer attention to the warning signs and be more cautious in their investments (Levi1987a, 1991a). Reputable investors and notable figures fail to report because they feel that their loss was either not significant enough to be of a great concern, or that embarrassment due to reporting may outweigh the benefit (Bottomley and Pease 1986).

Mars (1982) proposed that corporations are reluctant to report fraud and would instead deal with the challenge internally for fear of damaging relations with their clients. The unwelcome negative publicity and loss of face could be economically costly for the firm (Levi 1987a, and 1988). Some firms rationalized their failure to report by claiming that other business entities suffered more losses than they did in a particular scheme, so notification to law enforcement authorities in their case would be unwarranted although they are required by law to report victimization to the SEC and law enforcement agencies that has jurisdiction over where the fraud occurred. The reporting problem is further compounded by the fact that some fraud victims have little confidence in the ability of criminal justice agencies to take effective action (Levi 1987a). Hence, most securities fraud complaints are generally initiated by an individual investor or a group of investors and private citizens that have either been defrauded or have lost their investments due to improper trading practices.

The reservation and reluctance to report on the part of corporations is justifiable because enforcement agencies devote more of their resources to cases that are simpler, interpersonal and more likely to be resolved quickly at the expense of complicated, complex and drawn out cases. Securities fraud investigations, indictment, and prosecutions are time-consuming and costly. The limited ability of criminal justice agencies to respond to securities fraud is also caused by the complexity and hidden nature of this form of criminality. For these reasons, several cases of securities fraud either occur without being reported or fold naturally without being detected.

Despite the government's limited presence in the stock market, the increasing violence associated with Mob-run firms is beginning to enter the public record.

"Over the past couple of years, Italian organised crime, and the most violent, crudest elements of the Russian Mob, based in the Brighton Beach Section of Brooklyn are putting people in the brokerages, kids with clean records, and they are washing money legitimately." "The Mob's fascination with Wall Street is understandable, for they have had little to fear from law enforcement or regulators. It's practically impossible to prosecute these people unless you have a turncoat, somebody who can walk you through all those transactions," says Ira Lee Sorkin, a former Regional Director of the Securities and Exchange Commission. However, the validity of his claims has not been verified. "So long as the Street continues to keep silent on the Mob in its midst, organised crime will continue to be the silent partner of the financial markets" (Business Week, December 16th, 1996, Page 51).

The presence of organised crime and reputable offenders with large longer-term assets in the securities market is a real threat that can upset the stability of the stock market because a significant percentage of retirement and pension funds invest in the stock market for high yields and quick returns. In 2001 alone, the New York State Attorney-General recovered over half-billion dollars from major legitimate financial institutions for investors who had been victimized by these investments houses on Wall Street, but there was no monetary penalty imposed on organised crime controlled firms who were convicted for stock fraud because the companies filed for bankruptcy and liquidated following the indictment (the details of one of many recoveries by the NYS Attorney-General are discussed in the next chapter)

The growth-potential of high yield traded securities is promising, although they are highly risky. Katz (1980) suggested that "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 the moral integrity in the economy and polity."

It is worth noting that legitimate corporations and private financial advisers with no ties to the Mob are also using the stock market to defraud investors of billions of dollars annually (New York Post, March 5th, 2001, Business Section). The limited role of regulators in policing the securities industry created opportunities for corporate and organised crime sponsored stock schemes on Wall Street.

Like their corporate counterparts, organised crime groups have always been active in underground economies for other than economic reasons. But the skills that are needed to execute drug or prostitution rackets differ significantly from those required for stock fraud. Thus the formation of relationships with other than Italian-American fraudsters on Wall Street is a business decision aimed at maximizing profit.

The law of comparative advantage is just as valid in underground economies as it is in the world of Adam Smith. Though most investors by volume of funds invested may be professional and institutional investors who are largely functioning in a different segment of the market, and no-one knows the level at which their confidence vanishes if these fraudulent stock schemes do not receive the appropriate remedial response from the regulatory and criminal justice systems, individual investors may eventually lose their faith in the stock market. A loss of investors' confidence could be very damaging for global economies and the world's financial engines that depend on the stock market for their continued vitality.

Some proactive intelligence and policing strategies aimed at controlling organised crime's involvement on Wall Street will be discussed in the next chapter.

CHAPTER SIX

CONTROL OF SECURITIES FRAUD

INTRODUCTION

This chapter illuminates on some of the pull factors that led organised crime to seek new opportunities in the securities market, the impediments to control of securities fraud, and offers some poignant strategies for effective control of securities fraud.

The securities market is an environment that rewards flexibility and adaptability to change. The criminal networks operating within this sort of environment "are primarily a reflection of the nature of the unregulated crime market. They develop piece meal and the longer these criminal organisations remain successful, the more complicated their "organisation" becomes, not because of the smartness of the design but because ongoing organisations develop like a delta network of streams, brooks and creeks" (Van Duyne and Levi 1997:26).

The criminal organisations operating on Wall Street are interactive parts of growing criminal networks that are exploiting loopholes within the legitimate financial markets to thrive and survive. One of the difficulties with the Braithwaite (1982) enforcement pyramid and graduated sanctions approach to fraud control is that it presumes that regulatees are going to be around for the next sanctions stage if they do not reform. But with the marginal, fly-by-night operators, connected to organised crime fraudsters that were examined in this study, this is not the case. Any meaningful attempt to control securities fraud within the financial industry will therefore require that a closer attention be paid to individual, group and market forces driving securities fraudsters. Growth in capital market, coupled with the inability of some investors to recognise fraud indicators stand at the helm of the market forces and pull factors responsible for fraud within the stock market in New York.

In a discussion on the evolution and globalisation of our capital markets, Mr. William McLucas, the former Director of Enforcement, Securities and Exchange Commission, noted that in 1983, just two decades ago, the volume of foreign trading in U. S. securities was at approximately $134 billion. By 1993, that volume had reached $617 billion. Likewise, the level of U. S. investment in foreign securities market in 1983 was at about $16 billion. In 1993, that level was at $555 billion (Raine and Cilluffo 1994:16 Center for Strategic and International Studies). Today, annual foreign investment in U. S. Securities and U. S. investment in foreign securities markets exceeds one trillion dollars. (SEC fact book 2002). According the SEC 2003 Annual Report (www.sec.gov), there are 8000 mutual funds with seven trillion dollars and twenty trillion dollars in investments that floats annually through the U.S. capital markets. As the stock market grew in size and trading volume, so have the criminal groups operating within the industry. The ability of these criminal groups to establish a central goal has to do with the degree of compatibility and depth of relationship among the members of the network.

Participants in criminal organisations rely on what Porter and Warner (1979) cite as the importance of value, ethics, and beliefs. The smooth running of their operations depends on the degree of value congruence between members of the network. The degree of value congruence in any particular network depends on the degree of trust and respect that can be established between members of the network. But it seems plausible that some members of the network may be there by intimidation rather than value congruence, at least sometimes.

Securities schemes are formed on a voluntary basis. For the most part, there is no legislation to govern relations. Rather, relationships are formed by interested parties who recognize the need to work together to achieve some common objective. Yet, government actions designed to control fraud on Wall Street have not kept pace with the changing market forces capable of creating opportunities for fraudsters.

One of those market conditions is the limited nature of sanctions and remedies utilized by state and local judiciary in dealing with stock fraud. Effective control measures may help to reduce risk to the market from organised crime groups. Organised crime groups and elite Wall Street firms have been able to penetrate the market because the regulations governing the financial sector have permeable spots and loopholes. However, there is a variation in the strategies employed by legitimate Wall Street investment firms and bust-out scammers on Wall Street. While bust-out scammers conduct their operations primarily through boiler-room type brokerages, legitimate firms fleece investors through trading on non-public information (insider-trading) and subordinating the financial interest of the clients to corporate profit through excessive trading in lucrative restrictive securities (house stocks). By closing these loopholes, the risks to the market from organised crime groups can be reduced since these loopholes are subject to exploitation by criminal syndicates and fraudsters who prey on weaknesses within financial structures and institutions.

Crime classification influences enforcement and control strategies and reduces the inhibitions upon organised and other securities criminals. The FBI Uniform Crime Reports, also known as the official crime data, which was first published in 1930, originally selected seven crimes as the “index” crimes. Index crimes are the crimes which allegedly pose the greatest danger to society (or did when they were devised). These offenses are murder, forcible rape, robbery, aggravated assault, burglary, larceny-theft, and motor vehicle theft. In 1978, the United States Congress added arson to the list. There is no category of white-collar crime that is included in the “index crimes”. While it may not be difficult to recognize the dangers of violent interpersonal crimes, it is hard to see how larceny-theft or purse snatching and theft of motor vehicle outweigh the damage that victims of white-collar crimes suffer. It should be noted that the FBI has devoted substantial resources to white-collar crime, so the lack of counting may not be as important as the reluctance of police officers and local prosecutors to investigate and try white-collar crime cases.

Over the years, the FBI has carried out some major investigations into the white-collar related criminal activities of organised crime groups. However, federal prosecutors have been reluctant in charging organised crime securities fraudsters under the Rico statute because not only is it a bureaucratic headache, but the evidential threshold for conviction under the RICO statute is also greater than the criteria required for conviction in index or violent crime cases. This observation applies both to fraud charges as well as RICO.

Moreover, only eighteen percent ($58 million) of the NYPD other than personnel budget of $298 million (total NYPD annual budget is $3.7 billion), and twenty three percent of the $81 million annual budget of the District Attorneys in the five counties in New York are earmarked for fighting white-collar crime-securities fraud, insurance fraud, medicare/medicaid fraud, money laundering and tax-evasion.

The annual budget of the Office of the New York State Attorney-General is $197 million. Although the budget earmarked for combatting white-collar crime by the criminal justice agencies in New York seem relatively high compared to the budget of other law enforcement agencies within the United States (SEC annual budget for the year 2003 was $716.4 million with three thousand one hundred employees), the bulk of the New York State enforcement budget is directed toward fighting violent crimes (index crimes). In New York State, the increase or decrease in index crimes plays a significant role in voters decision to re-elect local and state prosecutors. Some of these weaknesses in the control process have acted as catalysts that have helped pull organised crime into Wall Street.

THE PUSH AND PULL FACTORS IN SECURITIES SCHEMES

Organised crime members and associates are pulled into the financial market because they see wealthy and successful stock players and dealers on Wall Street, and are enticed to "get in on the action" as one of the Genovese crime family "turn-coat" once submitted in a court deposition. The Genovese crime family, in particular, has established a strong foothold in New York's financial markets. A three year investigation by a detective assigned to the "Joint Organized Crime Task Force" revealed that the crime family's successful penetration of Wall Street was facilitated by their attraction of different groups who were able to bring different skills to bear on the way their schemes are organised on Wall Street. These "non-made" members of the crime group were recruited after series of drug-related transactions between them and members of the crime family. Some were forced to facilitate the interest of the Genovese crime family on Wall Street for fear of blackmail after compromising

their positions with crew members who are promoting the interests of organised crime within the financial centre. Ironically, the "fit and proper person" controls that prevent illegal drug users from working in the industry make them more susceptible to blackmail as the only way of staying in business.

Table 3: Cross tabulation: Offence Type by Crime family

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
crime family * offence type	116	100.0%	0	.0%	116	100.0%

crime family * offence type Crosstabulation

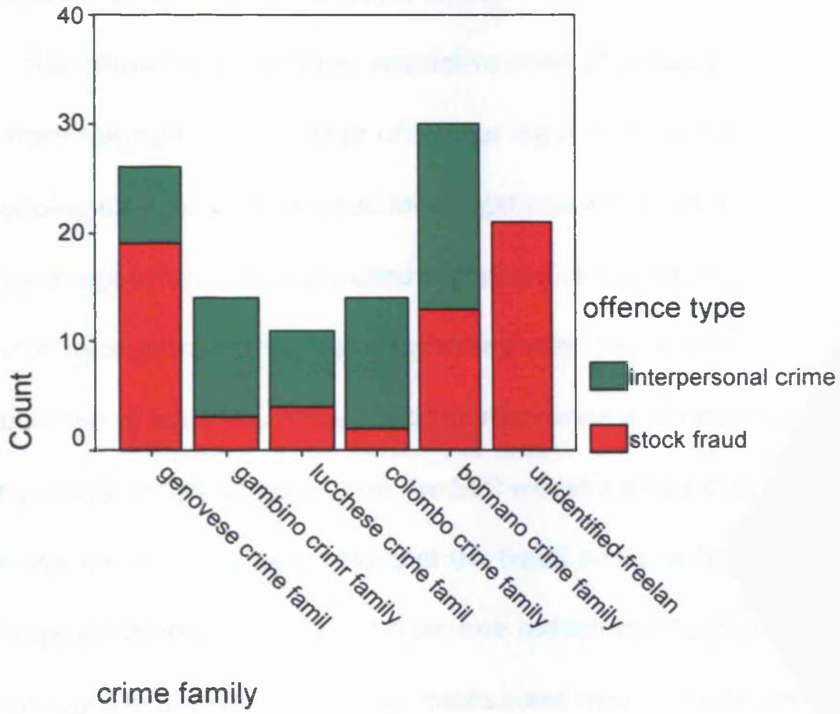
			offence type		
			stock fraud	interpersonal crime	Total
crime family	genovese crime family	Count	19	7	26
		% within crime family	73.1%	26.9%	100.0%
		% within offence type	30.6%	13.0%	22.4%
	gambino crime family	Count	3	11	14
		% within crime family	21.4%	78.6%	100.0%
		% within offence type	4.8%	20.4%	12.1%
	lucchese crime family	Count	4	7	11
		% within crime family	36.4%	63.6%	100.0%
		% within offence type	6.5%	13.0%	9.5%
	colombo crime family	Count	2	12	14
		% within crime family	14.3%	85.7%	100.0%
		% within offence type	3.2%	22.2%	12.1%
	bonnano crime family	Count	13	17	30
		% within crime family	43.3%	56.7%	100.0%
		% within offence type	21.0%	31.5%	25.9%
	unidentified-freelance	Count	21		21
		% within crime family	100.0%		100.0%
		% within offence type	33.9%		18.1%
Total		Count	62	54	116
		% within crime family	53.4%	46.6%	100.0%
		% within offence type	100.0%	100.0%	100.0%

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	39.239[a]	5	.000
Likelihood Ratio	48.462	5	.000
Linear-by-Linear Association	1.456	1	.228
N of Valid Cases	116		

a. 0 cells (.0%) have expected count less than 5. The minimum expected count is 5.12.

Figure 3: Offence Type by Crime Family



As the above data suggest, the Genovese crime commits 30.6% of the traditional organised crime related scams on Wall Street, the Bonnano crime family 21%, Lucchese crime family 6.5%, Gambino crime family 4.8%, the Colombo crime family 3.2%,. And unidentified freelancers 33.9%. Although the Genovese crime family is the most successful Italian-American crime family on Wall Street, their dream for further expansion has been hindered by the group's restrictions and closed-door policies on financial fraud schemes exceeding $5 million, due to the perceived danger that large scale schemes and exposure to outsiders can pose to their organisation. The FBI is less enthusiastic in pursuing cases that are less than $6 million, unless in exceptional circumstances. The $5 million threshold was evidenced from taped conversations in meetings of the crime family that were recorded by an NYPD sergeant charged with the supervision of detectives assigned to the investigation of the Genovese crime family.

The crime family's rather restrictive code of conduct has somewhat inhibited them from taking full advantage of stricter legal and judicial restraints on police methodologies in securities fraud investigations which created some of the situational opportunities that pulled organised crime into the financial sector. From a rational choice perspective, it is easy to see why they would be tempted to transfer their balance of activities if they had the resources and opportunities. A review of over two thousand decisions posted on the SEC website show that the penalties imposed by the agency were trifling portions of the fraud amount. In most of these cases, the fines imposed by the SEC ranged from one million to two million dollars, whereas the fraud amount in almost all of these cases were more than ten million dollars. In almost every case, the violators paid the fines without conceding any wrong-doing. Lighter sentences and monetary fines which are disproportionate to the amount of the loot could have lured organised crime into Wall Street. There are also certain factors such as mergers of criminal networks, which when added to the opportunities that the stock market itself provide, could both enhance and facilitate securities fraud.

These situational opportunities must be factored into crime reduction strategies and interactions designed to push fraudsters away from the securities market.

There are several push factors that can aid in the fight against securities fraud and help keep organised crime out of Wall Street. Some of these factors are:

1. The introduction of forensic techniques into fraud investigations.
2. Better surveillance by banking institutions.
3. Better control of agencies that supply temporary, seasonal and permanent employees to firms on Wall Street.
4. Utilization of a compliance approach through persuasions, motivations or rewards to encourage timely reporting of fraud indicators.
5. Strict application of the RICO Statute to securities fraud prosecutions.

Criminal justice agencies can no longer view organised crime families in a New York as separate and competitive ethnic-based underground swindlers. Not only are these crime families supporting and assisting each other on a regular basis, but they are also building networks and relationships with Russian-origin criminals on Wall Street. These alliances are vital to the planning and execution of successful boiler-room type securities schemes. These boiler-room operations are especially dangerous because unlike swindles involving major financial houses where victims receive compensation, in boiler-room scams, the harm to the victim may be greater since victims hardly receive any compensation in boiler-room scams. Since 1989, eighty-two percent of arrests for boiler-room scams involve members of Italian-American organised crime.

Organised crime is very adept at changing criminal activities (e.g. recent diversification of organised crime members displaced from traditional rackets into home repair scams- another good example of "transferable criminal skills", in this case very simply cons that generate less social anxiety than selling stock). As I mentioned earlier, the financial markets created some of the criminal opportunities that encourage diversification. Howbeit, most securities fraud schemes are short-term, the victims almost always suffer substantial financial hardships, and some of the fraud victims in this study were forced into financial crisis after their losses. A defrauded retiree from Virginia who I interviewed told me that he was forced to sell his timeshare with the Fairfield Resorts, Incorporated because he was unable to pay the monthly maintenance charge on his timeshare after losing most his retirement income in a stock scam. In almost every one of these cases, the sanctions did not equitably reflect the social harm inflicted by the fraudsters on their victims.

In addition to disproportionate sanctions, there are several other pull factors which make detection and control of securities fraud difficult. These factors are:

1. Ease of access to opportunity for stock scheme.
2. Better structure of deniability
3. Evidential problem of linking the principal swindlers in pyramid schemes.
4. Budgetary constraints and inadequate resource allocation (though of course this is a factor in any crime).
5. Situational weaknesses in the supervision and monitoring (control) process.
6. Judicial and legal restraints on eavesdropping and other enforcement methodologies in policing the stock market.

7. Tension between law enforcement needs for evidence and prevention.

The above pull factors make the stock market susceptible to fraud. The securities market is also vulnerable to fraud because it is one of the few industries where marginal firms are allowed to reorganize their product and continue trading under some form of regulatory oversight, instead of a complete delisting of firms showing initial signs of financial troubles.

Yet, (at least by number if not by cost), a vast majority of the swindles on Wall Street are committed in marginal firms and in less established firms by either stock specialists associated with those firms or fraudsters who happen upon permeable spots and weaknesses within a particular firm or in a potential victim. Novel and weaker firms are especially vulnerable to fraud because questions of reputational harm, shaming and stigmatization are of primary concern mainly to viable and well-established firms and corporations with business continuity plans. If the firm is going bankrupt or going out of business, then questions of naming and shaming are generally not important since reputational harm is often a concept used to express concerns and fears about diminishing future investment in a firm. Besides being unruffled by poor image and bad publicity, failing firms are also resilient to strict enforcement of securities regulations by law enforcement agents.

Pace and Styles (1975:3) noted three decades ago that control of organised crime will not be achieved through enforcement alone. "The effects of any branch of society directed toward controlling organised crime activities will be largely unsuccessful unless the public is made aware of criminal methodology and the magnitude of organised crime."

The efforts aimed at controlling white collar crime must follow non-traditional problem solving approaches. Control agents must first recognize and fully appreciate the extent and dimensions of securities fraud before attempting to design a determined course of action or response in dealing with the problem. These control measures must be designed not only to target criminal groups and the types of behaviour they engage in but should also focus on major financial houses and ill-informed high-risk investors who are culpable in fueling the culture of fraud on Wall Street.

APPROACHES TO THE CONTROL OF SECURITES FRAUD

Some scholars have argued that the key to controlling fraud in the financial market is tougher sentences, stiffer fines, and imprisonment for violators of securities laws (Coleman 1989, Pearce and Tombs 1990a, and Chambliss 1967). These deterrence theorists (at least in the context of elite crimes) put emphasis on the criminal justice system and imprisonment as the essential element in the crime control process. But Simpson (2002:50) argued that contrary to the view of deterrence theorists, "Managers and corporations may be inhibited from misconduct by other kind of fears. For instance, threat to reputation, current or future employment, access to competitive resources, friendship networks or associations, and family attachments can curb an illegal conduct independent of legal sanctions." Similarly, Weisburd, Waring and Chayet (2001:102) concluded that, "there is no evidence of a specific deterrent effect of prison in any of the matched groups in our analyses. Indeed, in each of the comparisons we examined, those receiving prison sentences are slightly more likely to recidivate than those in the no-prison sample." In their study of 410 nursing home Chief Executives Officers in Australia, Braithwaite and Makkai (1991) concluded that certainty and severity of punishment do not have a significant effect on crime reduction. So it appears that tougher prison sentences do not by themselves effectively deter white-collar crime. Bardach and Kagan (1982) maintain that a self-policing approach will be more effective in controlling stock fraud. The self-policing model views government intervention in the market place as unreasonable, unresponsive and counter-productive. The underlying assumption behind the compliance approach is that most people and firms operating under the auspices of regulatory agencies are "good apples" and that a deterrence posture only creates ineffectiveness and inefficiency for both the regulated and the regulators (Bardach and Kagan 1982, Clarke 1990, Croall 2003).

The arguments in favor of a self-policing model in policing Wall Street seem compelling. No securities firm wants to endure negative publicity of a criminal investigation into their business practices. So many will effectively self-police to prevent or at least control fraud since corporations are better disposed to internally control fraud than law enforcement agencies who are external to the firm. However, we recognise that some people are inherently crooked and will exploit weaknesses in securities regulations to fleece unsuspecting investors. It is for this reason that (Braithwaite 1984:101) argued that "self-regulation should be more than setting up internal policing systems". Nonetheless, it seems that there is a problem of "criminal differentiation" implicit in these competing models of how to deal with economic crime because at the time that Weisburd et al. (2001) were collecting their sample, it is unlikely that many "Family-connected" fraudsters would have been in their dataset, and the sorts of businesses that Simpson (2002) was discussing may not have been marginal businesses or individuals that might go bust anyway.

In his work on broker-dealer sanctioning, albeit in a much earlier era, Ewick (1985) observed that the SEC has been more successful when it saves its most serious sanctions for operationally less powerful and failing organisations. Ewick noted that the extent of SEC victory or loss in a particular case is determined by "who the regulator is up against". Therefore, it is not surprising that fraudsters with vast financial resources at their disposal and reputable and powerful violators receive more lenient responses from SEC regulators. Ewick (1985) reasoned that the SEC has a controlling interest in preserving the viability of the industry it regulates. If the agency goes after the most powerful and most influential firms in the securities industry, it stands a higher risk of losing such proceedings. Repeated failures in obtaining convictions in high profile cases could diminish the effectiveness of the SEC in regulating the non-elite parts of the securities industry.

The classical school of thought (Beccaria 1963), on the other hand, believed that for a criminal penalty to achieve its purpose, the pain it inflicted should exceed the advantage that could be obtained from the crime it sought to control. In calculating the relationship between crime and punishment, they argued that the law should take into account the "certainty of punishment and loss of good the crime might have produced."

But several scholars (Braithwaite 1982, Braithwaite and Geis 1982, Moore 1987, Sherman 1993, and Grabosky 1995) have already challenged the relevance of the classical approach to crime control. Bardach and Kagan (1982) argue that criminalization and severe punitive responses to white-collar crime could inadvertently increase corporate offending instead of reducing it. As an alternative to the deterrent theory, Clinard (1990), Braithwaite (1985), Simpson and Paternoster (1996) and Simpson (2002) all suggested that industry self-regulation and informal social control are viable solutions to effective crime control. Reiss (1984) symbolized these opposing views with the characterization of two distinct models in enforcing securities regulations: compliance and deterrence models.

The main objective of the compliance approach according to Reiss (1984:23) is "to secure conformity with the law by means insuring compliance or by taking action to prevent potential law violations without the necessity to detect and penalize violators" (Reiss 1984:23). The cardinal goal of the deterrent approach, on the other hand, is "to secure conformity with the law by detecting violations of law, determining who is responsible for their violation, and sanctioning violators to deter future violations, either by those who are punished or by those who might do so were violators not penalized" (Reiss 1984:23).

While the compliance-punitive approach has been widely advocated (Grabosky& Braithwaite 1986, Frank 1984), Scholz (1984) argued that this model leaves two serious questions unanswered. According to Scholz (1984), the compliance approach has not yet settled the question of which enforcement strategy works more effectively and efficiently at controlling rule violations. Neither has the deterrence model settled the question of which strategy is more appropriate for regulating which industries and practices. Neither of these approaches renders a plausible explanation as to why the SEC predominantly use one set of enforcement strategies over another: why there is a variation in enforcement strategies depending on the firms which are the subject of the SEC inquiry; why judges and the courts treat securities violators with relative leniency.

There are also several psychological, cultural and social elements that encourage the development of illegality. These psychological drives that hinder anti-illegality measures and motivations and social structures that encourage contacts and exchanges between legitimate and illegitimate markets must be giving serious considerations by policy makers and criminologists working in the area of white-collar crime.

It is risky to make general statements about how to control fraudulent practices by organised crime and major financial houses on Wall Street. Part of the reason is because securities and investment firms are highly sophisticated in the way they execute their trading decisions and they do so according to the specific circumstances with which they are confronted with at the time. However, any viable attempts to control stock fraud must be capable of closing loopholes in oversight and reduce opportunities for fraudsters without being unnecessarily harsh, and these will require changes in crime prevention strategies.

Simpson (2002) noted that instead of crime inhibition, harsh punishment as a tool for crime reduction could "produce more crime or other undesirable outcomes". For instance, in order to avoid harsh sanctions, companies could become less cooperative and more evasive in their dealings with criminal justice representatives. Simpson (2002:51) argued that "sanction certainty generally produces greater crime inhibition than the imposition of harsh punishments. In order to induce specific deterrents, our system of punishment must be sensitive to firm complexity and variability. Punishment, then, must also be variable" Simpson (2002:54). I am not disputing the general arguments for crime inhibition, but except where the profit has been spent already and there are no substitute assets, an effective sanction for fraud prevention must be capable of taking the profit out of the offence that the sanction seeks to control (Levi 1997).

PITFALLS TO EFFECTIVE FRAUD CONTROL

Not only research but also personal observations indicate that each of the criminal justice agencies charged with the detection, investigation, prosecution, conviction and incarceration of securities fraudsters sometimes consider itself an independent agent within the criminal justice system. Garland (2001:123) argued that "there is a growing sense in western administrative cultures and organisational environments that crime control is in part beyond the reach of traditional state intervention due to resource constraints and independence among state agencies." By owing loyalty and consideration to no other agency, information sharing is hampered and the problem of fragmentation increases. The greater the fragmentation, the less likely system goals will be achieved. Understanding how system principles relate to the justice community will help us to gain a better understanding of the problems within the securities industry, assess its needs and improve fraud prevention mechanisms on Wall Street.

Should the criminal justice agencies develop closer ties with enforcement and regulatory authorities on Wall Street? Should these agencies divert most of the resources for dealing with violent crimes to the control of securities fraud? What will happen if the organised crime groups are displaced from the stock market? Will they become more violent if pushed away from the stock market? Is it better then to leave in the stock market or force them into more violent crimes? These are some of the serious policy questions and dilemma faced by prosecutors who wields the most extensive discretionary powers of all the other crime control agents within the criminal justice system.

Discretionary decision-making by criminal justice practitioners is a cardinal and unavoidable component of the prosecution, legal and judicial processes. Due to resource constraints, prosecutors are sometimes forced to devote their limited resources either to prosecuting violent crimes or indicting white-collar fraudsters. When such dilemmas present themselves, public outcry and concerns about violent crimes usually weigh heavily on the prosecutors' decision to either pursue violent offenders or file accusatory instruments against white-collar fraudsters. For some of these public observers, discretion leads to bias, discrimination, injustice and inequity in treatment (Davis 1969).

For others, discretion enables government agents to be flexible in translating rules into action, thereby making it possible for them to recognize the unique features of each case or each type of offence and its applicability to the specific defendant (Handler 1986). Most of the prosecutors I interviewed for this project, as well as the as the ones that I deal with on a regular basis in my official capacity, prefer handling violent crime cases to prosecuting securities fraud or any other form of white-collar crime, especially if their superiors are up for re-election. And even in selected cases where securities violations are pursued criminally, prosecutors have reason to be reluctant in using the criminal justice process against corporate offenders such like Merrill Lynch, Citigroup, JP Morgan, etc.

The primary reason for non-criminal prosecution is because conviction for a felony would lead to prohibition on continued trading in the financial services industry, with chaotic potential consequences for customers and employees, the collateral damage from prosecution may be too heavy to contemplate. Setting aside issues of political funding and other cultural and ideological constraints, severe and harsh penalties for corporate violations may have a disabling effect on innocent employees of the corporation. If the severe criminal penalties force the firm to go out of business, the job loss resulting from such drastic government intervention can lead to further economic problems in the communities that were benefiting from that defunct business entity (Moore 1987). For these reasons, enforcement strategies designed to control securities fraud may require different approaches from those used to enforce violent or interpersonal crimes.

One such new approach to controlling white-collar crime is currently being employed by Mr. Elliot Spitzer, the New York State Attorney-General in addressing securities violations on Wall Street. On 12/25/2001, the New York Attorney General negotiated a plea agreement where Merrill Lynch will pay one hundred million dollars, Lehman brothers eighty million, Goldman Sachs and Co seventy five million, Salomon Smith Barney 70 million, Morgan Stanley, Dean Witter 65 million and Discover and Co. 65 million for price-fixing on the NASDAQ instead of issuing criminal indictments or opting for criminal prosecutions.

In dealing with the issue of harm and blame-worthiness relative to white-collar crime, Benson and Cullen (1998:170) concluded that prosecutors "may be more likely than judges to regard any given instance of corporate criminality as deserving of harsh sanctions. At least in their remarks, they appear to believe that judges often are too lenient in corporate crimes."

A thorough judicial understanding of the impact of stock fraud on both investors and the economy is vital in the fight against securities fraud. This is crucial because the role of judges and the court system has become increasingly controversial in the United States as politicians leave policy vacuums for jurists to fill. Rising interpersonal crimes demand for the immediate adjudication of violent criminal cases instead of pre-occupying the judiciary with securities fraudsters. Snider (1991:217) sees the reluctance of regulators and some judges to "get tough" with violators as a basic problem of regulation. The minimum sentencing guidelines that judges are mandated and obligated to impose on certain types of crimes has a direct impact on the choice of criminals and on the type of crime the offenders commit.

The mandatory statutory penalty for securities violations in state and federal criminal procedure laws is less severe than penalty for mail fraud, purse-snatching, pick-pocketing and petty-larcenies. This may very well serve as one of the explanations why securities fraud is more attractive to criminal syndicates and newer generations of traditional organised crime families, in addition to their traditional offences- mail fraud, purse-snatching, pick-pocket and petty-larceny. Surely another factor is that you can rake in a lot of money quite quickly and it is less graft than petty crimes.

Judicial corruption is also one of the magnets that draw offenders into the securities market. In August 2003, New York State Supreme Court Justice Gerald Garson was charged for receiving $80,000 in bribes from organised crime groups in exchange for favourable treatment. A case study on "Operation ABSCAM" which detailed the corruption of government officials is discussed in Rosoff, Pontell, and Tillman (2002:347-351), though this was not particularly connected to "organised crime" in the sense that we use it here.

In addition to judicial indiscretions, the organisational pressure on judges to clear dockets and dispose of cases within a stipulated time also puts pressure on judges and in some cases, turns jurists' focus from justice to docket clearance. This is important because docket clearance rates are used as performance indicators which serve as basis for upward mobility, promotions and preferential assignments of judges to more prestigious jurisdictions.

Another significant stumbling block to fraud prevention is computer illiteracy among enforcement personnel. Securities fraud is carried out primarily by use of computers. The potential for fraud schemes involving manipulating data or programs, especially at the end of the trading day are enormous. Yet, the computer skills of some of the enforcement agents have not kept up with technological advancements. I am suggesting that successful attempts to combat securities fraud will suffer further defeat without the sound computer knowledge of control agents. Further adaptation is vital in controlling securities fraud since current enforcement methodologies are presently not well suited for its cybernetic tasks. Police agencies can no longer afford to be anti-intellectual (Beare 1995).

A comprehensive knowledge of computers and accounting skills to carry out complex financial audits and network analysis, library research skills, precise knowledge of prevailing law, and an ability to read large volumes of financial information are indispensable for controlling securities fraud (Beare 1995).

THE EVIDENCE COLLECTIONS STRATEGIES

Investigation into the activities of a firm or surveillance of an individual on Wall Street is initiated after a written or verbal complaint is filed or after a confidential tip from either a tipster or paid confidential informants is received. Following the filing of a formal complaint or receipt of a tip, the SEC and enforcement agencies with jurisdiction over financial investigations begin their inquiry of the complaint. The evidence gathered-through surveillance, taped conversations, interviews and confidential sources- during the course of the investigation determines whether the matter is handled as a civil case by the SEC or referred either to the Justice Department or in some cases, the New York Attorney General's office for criminal prosecution. When cases are referred for criminal prosecution, the entire investigative process is subjected to an evidence suppression hearing by the defendant's attorney. The Fourth Amendment to the United States Constitution guarantees individuals the right to be secure in their persons, homes, papers, and effects against unreasonable searches and seizures. In gathering evidence during the inquiry into a complaint, criminal justice agents in their zealousness have often crossed the boundary between genuine undercover work and improper privacy invasion when investigating securities fraud.

The exclusionary rule in the United States constitution stipulates that all evidence obtained by illegal searches and seizures cannot be admissible in a criminal prosecution. Prior to 1914, evidence obtained by unreasonable searches and seizures which should have been deemed illegal was admitted into evidence by state and federal agencies when adjudicating criminal cases. The only criterion for admissibility was whether the evidence was incriminating and whether it would assist the judge or jury in determining the guilt or innocence of the defendant. Admissibility of evidence was determined by its relevance to the criminal action. The manner in which the evidence was obtained was irrelevant and important.

In 1914, the rules on the admissibility of evidence took a drastic change in a U. S. Supreme Court ruling in the case of Weeks v. United States (232 U.S. 383, 334 S.C.T. 341.58 L.ED 652 (1914)). The defendant, Freemont Weeks, was accused by federal law enforcement agents of using the mails for illegal purposes. After his arrest, Weeks' residence was searched without a valid search warrant. The illegal search of his dwelling uncovered much incriminating evidence in the form of letters, all of which were admitted into evidence. The defendant was subsequently convicted of federal offences based on the incriminating evidence that was illegally obtained from his residence.

Following his conviction, Weeks appealed the case to the United States Supreme Court.

In its decision, the Supreme Court ruled that "if letters and private documents can be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value, and, so far as those thus placed are concerned, might as well be stricken from the constitution. The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land". With this ruling, the Supreme Court for the first time held that the Fourth Amendment barred the use of evidence obtained through illegal search and seizure in federal cases only. In 1961, in the case of Mapp v. Ohio, (367 U.S. 643, 81 S. CT. 1684, 6 L.ED. 2d 1081 (1961)) the U.S. Supreme Court extended the reach of the exclusionary rule and made it applicable to all state and local courts. The Mapp case led to the introduction of suppression hearings, another trial phase in criminal proceedings and to what is known today as the fruit of the "poisoned tree doctrine". Also, judges apply stricter criteria for granting judicial search warrants in fraud investigations since the "exigency clause" or the emergency exception to search warrant frequently embraced by enforcement agencies when gathering evidence in homicide and violent crime incidents cannot be readily utilized as the basis for gathering certain evidence without judicial approval when conducting investigations into securities fraud cases. The relative unattractiveness of combating securities fraud for law enforcement agents is due partly to legal restraints placed by the criminal justice system on evidence gathering, eavesdropping, and wire tapping in conducting securities fraud investigations.

Due to these legal constraints under existing statutes, some of the evidence that is gathered in fraud investigations collapses when subjected to intense legal challenge and scrutiny in court. Once the evidence is suppressed at a suppression hearing, the case against the defendant almost always disintegrates. A retired Southern District federal judge where most of the SEC criminal cases are tried told me that the SEC refers less than twenty-five percent of its cases to the Justice Department for criminal prosecutions because most of the evidence on which the agency's civil litigations are based do not meet the criteria for a criminal referral.

In addition to supression hearings, the weight of the evidence needed to prove a case beyond a reason doubt, the level of proof required for convictions under the laws of the United States is higher in securites fraud cases than it is in homicide cases. The reason is because the elements required for a criminal conviction (Knowingly and Intentionally) can be easily proven to jurors in violent crimes cases, but these two culpable mental states required for a criminal conviction is more difficult for the prosecution to establish (beyond a reasonable doubt) to a skeptical jury in securities fraud cases. In his first media interview following the conviction of Martha Stewart for securities fraud, the U.S. Attorney from the Southern District of New York who represented the interest of the government in the case told the media that "Martha Stewart was convicted for obstruction of justice and for lying to government officials investigating a very important case". Asserting that the evidence in the case did not meet the constitutional criteria for a conviction, Martha Stewart's attorneys quickly appealed her conviction to the United States Court of Appeals. Although she lost the appeal and was sentenced to a one year prison term at a federal corectional facility in the State of West Virginia, the Martha Stewart's verdict was an unusual decision that baffled many legal scholars who felt that the evidence did not meet the constitutional test to warrant a conviction.

Law enforcement officers can better control securities fraud by ensuring that judicial approval is obtained and constitutional safeguards obeyed before using search warrants, wire taps, bugs, kels, other eavesdropping devices, and surveillance equipment in conducting fraud investigations. Investigating agencies should also debrief their confidential informants, to ensure that the intelligence and background data on their confidential informants are thoroughly reviewed and the validity of the information verified before their intelligence is used as evidence in fraud investigations.

The SEC regulators should also periodically deploy some of their investigators to monitor trade, screens, electronic transactions and pink slips in over-the-counter trade as well as trading conducted on organised exchanges. But they should do so only within the boundaries of its authority as stipulated in the Securities and Exchange Act of 1934.

As mentioned earlier, the evidence collections criteria are stricter for securities violations than they are for violent crimes. A constitutionally acceptable evidence collections method, and lawful inteligence gathering strategies are therefore needed by law enforcement and SEC investigators to effectively control fraud on Wall Street. However, the constitution allows that a fraud investigation can be commissioned without a judicial warrant if the initial discovery of the scheme by enforcement agents was inadvertent. In one of such cases that was jointly handled by our department and the FBI, the Russian origin criminals and members of Italian-American organised teamed up to infiltrate Wall Street in a $40 million "pump and dump" stock scam (NY Post 2000).

The four-year probe, which began in 1996, was commissioned after FBI agents stumbled on documents in a storage locker while executing a search warrant in an unrelated case that detailed a large-scale stock fraud and money-laundering plot. In all, 19 people were indicted in that case, including the brother-in-law of Sammy "The Bull" Gravano, the Mafia turncoat who testified against late John Gotti during the federal racketeering trial of the late Gambino family head in 1990.

Two defunct Manhattan-based brokerage firms, then known as White Rock Partners and State Street Capital, carried out the $40 million fraud scheme. While the Russian-origin gangsters used their expertise in money laundering and offshore banking accounts in the scheme, the Italian-American criminals provided the muscle through threats and intimidation. The scheme was carried out through the acquisition of control of small brokerages by quietly buying a controlling number of shares in those firms.

Once the shares were acquired, the fraudsters then artificially boosted their value by paying unscrupulous brokers to persuade investors to purchase stocks traded by the organised crime controlled firms. As soon as the stock value rose six points, the firms cashed in by selling their secretly held shares, causing the value of the stocks to plummet.

Without the application of some of these offshore banking skills, the ability of organised crime to carry out certain schemes on Wall Street would be severely limited. One of the more frequently adopted scams by organised crimes groups on Wall Street involve the use of fraudsters who posed as truth-seekers by gathering negative information on firms trading on Wall Street. The negative data were then distributed through the web. As the prices of the stock plunged due to negative press, organised crime fraudsters behind the scheme profited by short selling the shares of companies whose stocks they knew would plummet. This scheme can be carried out from anywhere in the country, as long as there is access to a computer connected to the trading network, in spite of the availability of market programs designed to identify people active in the market prior to the release of price-sensitive information. Unlike traditional crime families, securities fraudsters are not confined to a specific location, but are distributed over fairly large areas, as were their victims. Several of the victims of the schemes that are discussed in this project invested their money in the fictitious firms from different countries around the globe, although the worthless stocks were traded from a trading post in New York.

PLEA BARGAINING

A plea-bargain is an important element in the final resolution of a white-collar crime case although it may have some negative consequences. Alschuler (1968) defined plea-bargaining as the exchange of prosecution and judicial concessions for pleas of guilty. Quinney (1979:445-458) noted that "we are at the same time products of our culture and creators of it." The behavioural patterns exhibited in plea-bargaining within a given criminal justice culture are rooted in the basic survival means structured for its participants.

There are normally four ways in which a bargain can be made between the prosecutor and the defense attorney.

1. The initial charges may be reduced to those of a lesser offense, thus automatically reducing the sentence imposed.
2. In cases where many counts are charged, the prosecutor may reduce the number of counts.
3. The prosecutor may promise to recommend a more lenient sentence, such as probation, to the judge presiding over the sentencing hearings.
4. When the charge imposed has a negative label attached (e.g. child molester), the prosecutor may alter the charge to a socially acceptable one (e.g. assault) in exchange for a plea of guilty.

Plea bargaining has become an essential and controversial part of the criminal justice process.

Mann (1985) has argued that plea-bargaining improves the administrative efficiency of the courts, enables the prosecutors to devote more time to more serious cases, and helps the defendants avoid extended trial and possible detention, and may provide a defendant with a reduced sentence. In his work on "Legality and Equality", Jack Katz (1979) noted that plea-bargaining is an essential element in the prosecution and resolution of white-collar crime as well as common or street crimes. Opponents of plea-bargaining, on the other hand, argue that negotiated pleas should be eliminated, though it is not obvious then how the demands for speedy trials would be met, and there would have to be a huge expansion in the number and costs of courts unless there were to be a massive diversion from the courts, but that would be politically untenable. In the particular case of complex frauds, trials without co-operating suspects might be extremely difficult, since there might be fewer live witnesses to testify as to the interpretaion of paperwork and conversations.

In 1973, The National Advisory Commission on Criminal Justice Standards and Goals stated that "as soon as possible, but in no event later than 1978, regulations between prosecutors and defendants- either personal or through their attorneys- concerning concessions to be made in return for guilty pleas should be prohibited." The commission's demand for the abolition of plea-bargaining has not materialized, and will almost certainly not materialize.

Plea-bargaining is a vital pragmatic tool in settling adversarial proceedings, if employed judiciously. The research evidence on negotited plea discounts is apparent not just from research but also from my own experience as a police officer.

Some opponents of plea-bargaining argue that it encourages defendants to waive their constitutional right to a trial, while supporters contend that defendants who takes a plea are generally better positioned than defendants who opt for bench trials to receive just and proportionate sanctions. In one of the illegal firearm distribution cases that I aided in its investigation, five of the defendants who pled guilty were given between nine and sixteen year sentences, suggesting that especially by European standards, sentencing was not so lenient even for those who pleaded guilty and got large discounts.

The two siblings who opted for a jury trial were each given a ninety-year prison sentence. Prior to the jury trial, the ADA in the Bronx District Attorneys' Office who prosecuted the case had offered them a 15-year sentence in exchange for guilty pleas, but the defendants declined the offer. Plea-bargaining does raise the danger that an innocent defendant in a criminal case may plea guilty to an offense if he or she is convinced that the lighter treatment from a guilty plea is preferable to the risk of a harsher or more severe sentence following a formal trial.

Due to overcrowding within the court system, it is unlikely that plea-bargaining will be eliminated or severely curtailed in the near future. However, efforts should be made to diminish the harm arising from plea-bargaining and its application by criminal justice practitioners. Such reforms should include the development of uniform plea practices, and the establishment of time limits on plea negotiations. Of the 116 defendants that were the subjects of this study, 57.1% of those charged with securities violations entered guilty pleas against prosecution charges, while 42.9% of defendants charged with interpersonal crimes opted for plea bargain –despite the relative absence of prior convictions. Securites fraudsters are more likely than street crime offenders to opt for a plea-bargain because from my research and interviews in the NYPD, investigators and prosecutors generally gather extensive incriminating evidence prior to initiating a fraud case, whereas defendants in street and violent crime cases are more likely to be indicted with mere circumstantial evidence, while material evidence related to the case is developed as the case proceeds through the court system.

Plea-bargaining is a widespread practice in securities fraud cases. After conversations between defense attorneys and prosecutors, stock swindlers often enter a plea of guilty to a lesser charge, carrying a much lighter penalty than the original indictment or accusatory instrument stipulates. The outcome of plea-bargaining in most stock fraud cases is the payment of fine with little or no prison term.

It may be impossible to eliminate discretion by criminal justice practitioners when making decisions. In fact, discretion may be necessary in some cases for flexibility and creativity in the pursuit of justice and in reaching just solutions. Most of the organised crime fraudsters who were indicted for securities fraud in the case studies that are discussed in this thesis pleaded guilty to prosecution charges.

The justification for plea-bargaining and lighter prison sentences in stock fraud cases even when the cases involve members of traditional organised crime as one prosecutor in the Brooklyn District Attorney's office puts it, "stems from the basic realization that the already overworked court system would be placed under even more strain if defendants were not induced in this way to waive trial." In his work on "Crime, Shame and Reintegration," Braithwaite (1989) proposed that the imposition of fines might be a more effective form of punishment for white-collar offenders than incarceration or other punitive sanctions. He reasoned that fines might work best if the desired goal of the punishment is to reintegrate the offender into the community after the penalty for the offense has been satisfied.

In their study on "Local Prosecutors and Corporate Crime" Benson, Cullen, and Maakestad (1993:5) found that prosecutors have recognized the need to control criminal activity through a problem solving approach instead of devoting all of their limited resources exclusively to the "development of prosecutable cases". They then went on to cite the case of a corporation that violated a statute governing the disposal of toxic waste. "Although there was enough evidence to pursue a criminal indictment, the prosecutor elected not to file charges. Instead, he negotiated an agreement in which the corporation paid a substantial civil fine, donated money to a local hazardous waste project, and reimbursed the entire cost of the investigation. The money from the civil fine was used to fund a conference on environmental problems for law enforcement and regulatory officials.

In this case, the prosecutor believed that this approach both educated and deterred other potential offenders, while the conference fostered environmental awareness among local officials. Preventing other corporate environmental violations took precedence here over enforcing the law against a particular offender." (Benson, Cullen, and Maakestad 1993:6). The New York Attorney-General is adopting a similar methodology in dealing with securities violations on Wall Street.

SECURITIES FRAUD AND THE CRIMINAL JUSTICE SYSTEM

We usually speak of the criminal justice system as if it were a single integrated entity. However, under close scrutiny, what becomes clear is that the justice system is made up of many organisations, each one driven by different survival objectives, and each working within a distinct culture or environment without necessarily sharing information with the other (Beare 1995: 177). Local and federal law enforcement agencies, hoping to take credit for a first crack at a case, repeatedly contend over the investigative tools that should be employed in fraud cases.

It is common knowledge that decision-making in the justice community is complex by design. But this problem is further complicated by political and social decisions influenced by individuals and interest groups that are within and in some cases, external to the formal justice process.

The current practice of self-regulation and voluntary control has had some success, but regulatory agents should be apt to keep up with changing market conditions and the constant shift in the modus operandi of the fraudsters. For example, many fraudsters have found that strategic alliances with other networks operating in the same sector are more rewarding than competitive battles against a more formidable swindler.

They find ways to exploit market vulnerabilities, while at the same time maintaining the necessary stability and predictability that business requires in order to be profitable. They do so by taking over only a piece of a legitimate business, and providing a service in return, rather than taking over the whole business. The latter would, of course, require a management responsibility that they do not want and possibly could not handle, and that would in addition likely upset the business climate necessary for success (Jacobs 1999).

Two of the key characteristics of securities fraud are: 1. The ability of the fraudsters to either conceal or disguise their purpose and wrongful act. And 2. Exploitation of the inadvertent assistance from victims.

Organised crime on Wall Street can best be described as entrepreneurial, opportunistic, and adaptable. Securities regulators on the other hand, appear to be surrounded by a closed circle of tightly organised and disciplined private interests. If these regulators force field is seen as a value pool from which differing value-related interests for the SEC may be drawn, it becomes obvious that there is a very high probability that regulators will end up with a limited range of alternatives.

Partisan political considerations also seem to have an influence on some of the SEC's decisions in selecting the firms whose activities are earmarked for investigation by the agency. In many of the cases that were reviewed for this project, it appeared that the administrative judges interpreted sections of the securities regulations to justify whatever action they have determined to take, with some plausible explanation. As mentioned earlier in chapter four, some of these judges believe that most stock schemes do not originate from a criminal intent. Three of the judges were reassigned to the Civil Division due to their repeated dismissal of stock fraud cases. In one extreme case on June 10th, 2004, a New York State Supreme Court Judge aided a robbery suspect and stock swindler in slipping out of her court room as NYPD detectives waited outside the court to arrest him on a violent robbery and stock swindle.

In three high profile cases in 2001, SEC regulators failed to impose the statutory fine on corporate violators alleging inability to do so for reasons that such stiff penalty will put the violator in financial ruin. For the most part, the agency stayed within the law in adjudicating these cases, but found ample latitude to favour certain special interest with which they have an established relationship, or with whom they expect to develop such relationship when their tenure with the SEC expires. All of these factors have led to the limited success of the criminal justice agencies charged with policing the stock market, a viable source of funding for organised crime families in New York.

CONTROL OF SECURITES FRAUD

What major steps should the government take in dealing with the problem of securities fraud? The strategic aim of government is to get crime under "sufficient" control (Torronen 2004), a term of some flexibility. But it will be difficult for the government to achieve its goal without encouraging voluntary organisations, market actors, local investors and other stake-holders on Wall Street to work closely with the SEC in a collective effort against Securities fraud. As mentioned earlier, the prevailing background against which law enforcement personnel, prosecutors and SEC regulators' decisions are made and implemented is biased in favour of certain values that favour the official definition of crime seriousness.

In other words, crminal justice agencies measure crime reduction and prevention in terms of community and public safety, and securities fraud as an unneccessary distraction. Successful strategies aimed at controlling securities fraud cannot be developed without a clear understanding of how securities fraud is carried out. There is an immediate need for policy makers to take another look at the prevailing crime control philosophy that separates enforcement from regulation, and puts a wedge between the public sector and the private sector.

Poor inter-agency and intra-agency communication has been a feature of many reviews of policing in the US and overseas, and my participant observation confirms that this is the case here.

As for technical surveillances, law enforcement agencies are still in the process of developing techniques that will allow for instant detection of intrusion into brokerage houses' computers. But even when that goal is finally achieved, technical surveillance and technology alone will not solve the securities fraud problem since this only relates to frauds committed from the outside. This may not impact upon fraudulent schemes devised by sole traders or small numbers of insiders, but government agencies charged with securities fraud control will need seasoned undercover human informants that are shrewd enough to penetrate the illegal securities networks operating in global securities markets and on Wall Street. To that end, American government agents will have to liaise with all the other law enforcement agencies in other jurisdictions. The establishment of large undercover international boiler-rooms by government agencies as a magnet for attracting key securities swindlers may be warranted along the scale of the NYPD's auto dismantling shops that were set up throughout the City of New York to attract major vehicle thieves and illegal auto parts distributors and purchasers. Although the successful infiltration of enforcement agents into organised crime networks in the stock market may only have a temporary effect on reducing organised crime related scams on Wall Street. The concrete benefit of such undercover infiltration is hard to measure, since all it will do is to show investors how they can be reaped off, and this can be politically problematic for criminal justice agencies.

In his work on "Undercover" Gary Marx (1988:6) acknowledged that "undercover work has come to be seen as an important and innovative tactic, carried out by carefully chosen elite units. The lone undercover worker making isolated arrest has been supplemented by highly coordinated team activities involving complex technology, organizational fronts, and multiple arrests. What was traditionally viewed as a relatively marginal and insignificant weapon used only by vice and "red squads" has become a cutting-edge tactic" Marx (1988:1).

Coordinated undercover and targeted decoy operations similar to ABSCAM (Pontell, Rosoff, and Tillman 2002:347-351) should be utilized to gather useful intelligence needed for the successful control of securities fraud on Wall Street. I recognise that such methodology may raise questions of target selection and ethical problems that can arise from the alleged creation of crimes that would not otherwise have occurred. It may even lead to civil suits for "false arrest" if and when these cases are dismissed for lack of sufficient evidence to prosecute (otherwise called declined prosecution or DP 343 within the criminal justice circle).

In order for any serious and effective control of securities fraud in the financial sector to be realized, criminal justice agencies, including regulators such as the SEC must be willing to:

1. Prevent, detect, analyze and investigate financial abuse and loopholes in current regulations.
2. Improve the effectiveness of fraud detection mechanisms on Wall Street.
3. Seek new, proportionate, and effective penalties for convicted securities fraudsters.
4. Negotiate new international agreements with foreign principalities to create a

seamless web for the prompt location, arrest or extradition of securities fraudsters seeking refuge for their loot in other jurisdictions.

5. Aggressively apply the forfeiture laws.
6. Rely more on informal and rigorous scientific studies in crafting crime control strategies.
7. Set crime seriousness and criminal opportunities in the context of the amount of lawful activity (Levi 1998).
8. Effectively gather, analyze, and disseminate intelligence on organised criminal activity in a timely manner.

The success of any of the above strategies depends in substantial part on the intelligence gathering process. According to Levi (1988) "Having an appropriate amount of information about the incidents of fraud is important because modern crime prevention theory relies largely upon the analysis of crime occurrence data at both macro and micro level, in order to work out how best to develop a crime reduction strategy."

STRATEGIES FOR PREVENTING SECURITIES FRAUD

Several attempts have been made by the U. S. government in an effort to control organised crime involvement in the financial industry. One of those attempts culminated in the enactment of the Federal RICO Statute in 1970. Several states, including New York also have their own version of the RICO statute. The Federal RICO Statute has been an important tool against organised crime as evidenced by the 116 organised crime cases that were reviewed for this study. In their study on the "Practical Utility and Ramifications of RICO" Urbina and Kreitzer (2004) found that

RICO has had limited success in the prosecution of traditional organised crime since its first application in 1981. RICO empowers law enforcement agencies to attack the organisational structure of organised crime. The forfeiture provisions in the RICO statute allow for the imposition of severe criminal and civil penalties on convicted organised crime members (Jacobs 1999).

The RICO laws provide legal remedies for defrauded investors to recover some of their losses. Investors are also entitled to compensation for the loss of projected income that their investments should have generated under certain provisions of the securities laws, though in practice only if the defendants have sufficient means to pay this. The Statute also provides for the resolution of disputes between a broker and his or her clients. Such resolution can be done through arbitration. Stock brokers and brokerage firms are subject to binding arbitration of complaints regarding customer accounts. This provision gives defrauded investors the opportunity to present their claims before a panel of arbitrators whose decisions are binding on both disputing parties.

The RICO Statute of 1970 stipulates that fines for racketeering should be twice the value of the transaction, in addition to the seizure of any property involved in or traceable to the illegal transaction. But neither the forfeiture provisions of the Rico Statute nor the confiscation and forfeiture provisions of the Securities Act of 1934 were applied in the majority of the cases in this study that qualified for the invocation of the confiscation and forfeiture provisions. Legally, the forfeiture provisions could have been invoked in many of these cases, but they were not. It appears, however that the non-utilisation of RICO and its confiscation provision is a more generic issue caused by the reluctance of the jury to convict in fraud cases where the defendant's assets, especially their dwelling, is in danger of forfeiture if convicted. A juror who sat on a federal forfeiture case that was tried at the Eastern District of New York in 2002 failed to convict because she felt the evidence did not warrant the loss of the defendant's home, although ten of the other jurors who served on the same case felt that the defendant was guilty. Four other cases have been lost by prosecutors in New York since 2002, and in each of these cases, the defendant's home was the proposed subject of forfeiture.

Statements made to enforcement agents suggest that the danger of losing their tangible as well as liquid assets, although seldom obtained in a forfeiture hearing, led Michael Dileonardo and Frank Fapiano of the Gambino crime family, and Anthony Rotondo of the DeCavalcante crime family and several other members of Italian-American organised to cooperate with prosecutors following their indictments in 2004. Some of them later entered the witness protection program in exchange for immunity from prosecution and protection of their assets.

I am not contending that forfeiture provisions should be applied in every case nor should incarceration be used as a primary tool for controlling securities fraud. Weisburd's (1997) "Specific Deterrence" study cited earlier has already shown that there is no specific deterrence for white-collar fraudsters who served prison terms when compared with convicted offenders who were never incarcerated. (Though their findings may not apply to the specific organised crime sub-sets that are the subjects of this study.)

What I am suggesting is that a rational control strategy must be capable of producing a future reduction in securities violations.

As Levi (1997) noted, strict application of the civil and criminal forfeiture provisions of the RICO statute can produce some unintended consequences. First, it has the tendency of moving the focus of enforcement personnel from the principal actors to people with assets, often financial intermediaries, irrespective of whether or not they are the key players in the scheme.

Non-discretionary application of the forfeiture provisions can also lead to "inappropriate level of zeal and tendency to abuse civil liberties on the part of law enforcement personnel" (Levi 1997:14). But in spite of these negative consequences, Levi (1997) noted that some measure of penalty that is proportionate to the reward from the criminal transaction is necessary in "taking the profit out of crime". In his work on 'Situational Crime Prevention', Clarke (1995) focused on the importance of opportunities and argued that the choice to commit a particular crime at a specific time is a rational choice that is reached following the identification of a criminal target and upon conclusion of a cost-benefit assessment by the offender. Any serious approach to crime prevention must therefore be able to block or at least reduce situational opportunities, so that the cost of the crime will significantly outweigh its benefit (Weisburd 1997).

During the course of this research, I reviewed almost two thousand SEC decisions that were rendered between 1996 and 2002. A vast majority of these cases were printed from the SEC web-site, while the rest were obtained from the SEC's New York Office. After careful examinations of these cases, coupled with the result of the quantitative analysis in table three (figure 3), it became clear that an effective control of securities fraud will be impossible to realize without the consistent application of the following strategies:

- The lever of regulation must be further strengthened and regularly applied by regulatory agencies charged with the oversight responsibility over the stock market.
- The media must play a more critical role in shaming and stigmatizing reputable offenders and offending firms.
- Increased publicity by government officials and accurate press releases to better educate the public and investors about the market processes operating on Wall Street at any given time.
- Accurate and timely warnings by the SEC, New York Stock Exchange, NASD and other trading houses to enable investors better assess the plausibility of a new offering or scheme.
- Irregular phony advertisements by government agencies, which will be accompanied by detailed warnings to the foolhardy, who responded to the phony solicitations just like the U.S. Postal Inspectorate did about a decade ago.
- Better communication between the regulators, the regulated, and market operators via the internet.
- Government agencies must build up an intelligence model by getting information from victims, scholars, criminologists, and the market, and by developing relationships with other regulatory agencies within the securities industry.
- Market control agents must ask specific and strategic questions that will generate awareness in potential victims of stock scams.

- Early warning signs of organised crime involvement in an offering must be thoroughly pursued and investigated.
- A culture of reciprocity, fairness, reward and justice must be adopted by criminal justice agents to encourage law-abiding firms and individuals.
- Sting operations by enforcement agents to reduce access to illegitimate opportunities and access to the tools of the crime must be frequently utilized.
- Rules about surveillance and police methodologies in combating securities fraud should be internationalized since the stock market is a global market that is accessible to traders from all corners of the globe.
- A proactive enforcement approach by fraud prevention squads by being close to the market and by going out and talking to market operators.
- A compliance approach to crime reduction through consultation with the regulated and self regulatory organisations by the SEC and other industry regulators.
- More international conferences and seminars (such as done by IOSCO and the Financial Crime Network) on fraud prevention between law enforcement officials and criminologists to facilitate the exchange of ideas and new fraud control approaches. The ideas and approaches gained from these international meetings can then be transported to various jurisdictions and utilized in the fight against securities fraud.

Securities fraud is a crime without borders, and so should be its enforcement and control strategies. Governments around the world will need to cross the divide created by their own national interests, since no enforcement agency in any country, acting alone can successfully control securities fraud. Since the Enron saga unraveled two years ago, securities fraud has emerged as a salient public issue. It should be noted that Enron was a sort of securities fraud based on the manipulation of underlying assets, whereas organised crime involvement on Wall Street is only a sub-set of the whole picture. A growing number of our citizens now, more than ever, recognize that financial fraud exacts a heavy toll from its victims. Several fraud victims with whom I have contact in my current assignment in the Organised Crime Control Bureau tell me that their confidence in the stock market waned after they were defrauded. Three of the victims who were conned into the scheme by their neighbours indicated that they have had difficulties trusting people since they lost their investment in a stock swindle in 2002.

Enforcement response to securities fraud must be international since some swindles are committed in a borderless environment from countries where some of the fraud victims may not be able to visit, still less to initiate a legal proceeding to recover their loss. Securities fraud is a border-less crime that will continue to plague world economies until legislation governing securities fraud becomes international in scope.

An international treaty which will establish a set of rules among governments and trans-national organisations that requires cooperation in the investigation, prosecution, adjudication and enforcement of securities laws is necessary for controlling fraud. I am aware that bridging legal systems internationally may be very difficult because laws and statutes and their application differ from one foreign jurisdiction to another. For instance, in the U. S., forfeiture proceedings occur mainly in civil cases, whereas in most foreign jurisdictions, forfeiture and confiscation provisions can only be triggered by a criminal conviction. Even in those jurisdictions that have civil forfeiture-currently Australia, Ireland, and the United Kingdom-securites fraudsters are not a priority, though gangsters who become involved in such frauds may well be.

Another principal issue that can hinder cooperation between different international law enforcement authorities in securities fraud cases is the crossover and jurisprudential interaction between criminal law in different countries and international human rights law. Serious conflicts arise due to the fundamental differences in the way each country defines human rights, including rights to financial privacy.

Securities schemes that are carried out in New York by someone residing in jurisdictions with no extradition treaties with the U. S. may be difficult to enforce. Further cooperation between governmental authorities in different jurisdictions internationally is vital in controlling securities fraud. International law enforcement must be flexible, stable and able to expand resources, enact laws, provide judicial assistance, and cooperate in transnational securities fraud investigations and trials.

Barrier-free national borders, fewer trade restrictions and global financial systems present new opportunities for securities fraudsters to expand operations beyond the New York's financial center. As securities trading barriers fall, as communications shrink our world, and as millions of people around the world enter the investment market, it is impossible for policy makers not to ask serious questions about securities fraud control. I recognize that the problem of political corruption in many global territories, especially in developing or underdeveloped countries could threaten the success of such operations, and may even endanger the lives of some participating agents.

A comprehensive enforcement strategy aimed at reducing swindles in the financial industry must also pay closer attention to legitimate, formidable, and well-established financial and investment houses on Wall Street. Most of the schemes on Wall Street are committed by fraudsters working in reputable and powerful firms. In light of the series of investigations by the New York State Attorney-General of major financial houses on Wall Street during the last three years, organised crime is less of a threat on Wall Street than other criminal groups or fraudsters associated with or without connections to investment houses within the financial industry. When I started this research project in 1998, there was insufficient evidence that ripping off the public was endemic in Wall Street major firms, as the evidence now appears to suggest. However, the threat that organised crime pose to the market is significant enough that it cannot be ignored, and the empirical component of this thesis has sought to cast some light on that dark corner of the securities market, where less compensation and fewer reputational controls are available.

PROSECUTION, DEFENSE AND SANCTION OF SECURITIES FRAUDSTERS

Prosecutors have a wider range of discretionary powers than all other government agents within the criminal justice system. In his work on "Prosecutor as Problem-Solver" Goldstock (1991) argued that reduction of white-collar criminality is a strategic function of prosecutors. If securities fraud reduction is a function of prosecution and enforcement agencies, what strategies should these agencies use to address the challenges that Italian-American crime families and Russian-origin fraudsters pose to the securities market? Goldstock (1991) proposed that any serious attempt to control white-collar crime will require both a philosophical and methodological change in the approach currently employed by prosecutors and other criminal justice agents. Prosecutors must adopt a problem-solving approach to control of white-collar crime instead of viewing themselves as mere presenters of evidence to judges presiding over adversarial hearings. And this will require that prosecutors make judges and the jury aware of all available and alternative penalties to the charge in their case summations during the penalty phase following the rendition of a guilty verdict.

According to Benson and Cullen (1998:244) the administration of justice in the United States is predominantly a local responsibility and local prosecutors are the most powerful control agents in the local criminal justice system. Local prosecutors are vital in controlling routine white-collar crimes since federal prosecutors are primarily concerned with big cases involving major national or international entities.

Katz (1979) found that prosecutors play a more active investigative role in white-collar crime than they do when handling common or interpersonal crimes. As in all cases, the prosecutors determine whether or not a case goes to trial. The decision of prosecutors to either prosecute or designate a securities fraud case as "decline prosecution" is shaped by many factors. These factors are:

1. Legal or personal constraints.
2. Availability of alternative sanctions and remedies for securities fraudsters.
3. Failure of victims to cooperate with the prosecutions team, especially if it is a criminal proceeding.
4. Financial and other resource limitations.

Crime victims also influence the direction of a securities fraud case. In most cases, fraud victims prefer recovery of their losses through restitution to retribution following a criminal prosecution. Some securities fraud victims are also reluctant to cooperate in criminal investigations against the fraudsters who defrauded them. The lack of victims' cooperation in criminal proceedings also weighs heavily on the prosecutors' decision on either to file an accusatory instrument or to negotiate a fair and acceptable deal with violators. In most cases, these lack of cooperation and resource constraints influence the prosecutors' decision to initiate a criminal inquiry or proceed with the case civilly through negotiations

These tensions between retribution and dissuasion prevent prosecutors from readily handing out criminal indictments for securities violations to large corporate entities especially. Lack of adequate resources and legal constraints in pursuing such cases also weigh heavily on the prosecutors decision to indict. Moreover, availability of alternative retributive sanctions makes negotiable remedies preferable to criminal prosecutions.

The difficult and time consuming process of investigating and prosecuting a case against major and financially more stronger Wall Street firms could place an undue and unnecessary burden on prosecution resources.

These challenges are constantly being exploited by powerful white-collar defence attorneys who work tirelessly to keep potential evidence out of the hands of government agents by controlling access to information (Benson, Cullen and Maakestad 1993; Mann 1985). Due to scarce resources and time constraints, defence attorneys in interpersonal or violent crime cases are often restricted to helping their clients' negotiate a plea agreement. But the securities fraud defence attorneys with more time on their hands often employ all the resources at their disposal to defend their clients. Part of the defence strategy in stock fraud cases is to reject initial attempts by the prosecutors or administrative judges for a plea-negotiation with their clients until they are convinced that a conviction is imminent (Katz 1979).

The tangled web of securities fraud also makes it easier for defence attorneys to put reasonable doubt in jurors' minds in reaching a decision on the culpability of securities fraudsters (except in Baron-type boiler room operations) unlike interpersonal or street crime cases where jury convictions are often less complicated. The chain of culpability that presents little difficulty in street crime cases is less present in securities fraud schemes. The sentencing process between violent crimes and securities fraud is also at odds. The sentencing determinants in interpersonal crime cases begin immediately after either the prosecutor or the grand jury hands down the indictments. This means that the penalty for violent crimes is clearly delineated in state and federal penal codes, but the penal law provisions dealing with penalty for fraud cases in general are ambiguous, complicated and more difficult to interpret.

In interpersonal crime cases, the goal of the lawyers is to dispose of the cases without undue delay since these attorneys generally carry a large number of similar cases simultaneously. Unlike defence attorneys in securities fraud cases who carry a smaller number of cases and invest a significant amount of time on each case, the interpersonal crime defender spends very little time on each case.

Moreover, in most interpersonal crime cases, the range of expected penalties, especially in plea-bargain convictions, is somewhat predictable. In securities fraud cases on the other hand, the defence attorney is a critical component of the case from the time an accusatory instrument or investigatory notice is filed and forwarded by the government agent to the suspected party until a final settlement is reached (Mann 1985), though Sentencing Guidelines have subsequently changed the scope for negotiation somewhat.

The persistence of ambiguity about the culpability or guilt of the defendant and uncertainties about the true nature of the offense are unique features of securities violations. In most stock schemes, it is not readily prove-able that a crime has occurred, even in organised crime type cases. There is also an absence of certainty in many stock fraud proceedings that the elements of a crime are present or that one has been committed. The interaction of these factors in a discretionary judicial system has given defence attorneys a critical role in the penalty and sentencing outcome in securities fraud cases.

Another significant determinant of the penalty variation between securities fraud and interpersonal crime is the point at which the defence attorney enters the adversarial process. In securities fraud cases, the defence attorney enters the adversarial process during its early stages, sometimes even before a criminal investigation is initiated- this is also true of mob cases. As a result, they are able to influence not only the government's decision on whether or not to indict the subject but also the outcome of the criminal proceeding if the case goes to trial (Katz 1979, Mann 1985).

When parallel civil proceedings are ongoing, the information disclosed could be exploited by either the defence or prosecution teams for the benefit of the interest or party they represent. For this reason, some defence attorneys invest enormous resources to manoeuvre the delay of a civil case against their clients to prevent damaging information from getting into the hands of government agents peradventure the civil case leads to a criminal indictment.

A defence attorney may be able to persuade a court to order an evidentiary or suppression hearing. Defence attorneys can also persuade the SEC to divulge information under the Freedom of Information Act if they have knowledge of the existence of documents, which suggest that criminal investigations were covertly pursued during the civil audit.

Information control can also be done through destruction of records. More intelligent clients conceal and destroy evidence, while others conceal the crime by taking or invoking the Fifth Amendment against self-incrimination. In addition to using the Fifth Amendment to control disclosure of information, defence attorneys use attorney-client privilege to further conceal damaging confidential communication between them and their clients.

Any successful attempt by government agents to control securities fraud will therefore require the collective efforts of the criminal justice agencies and a sophisticated intelligence and evidence collections strategies that utilise some of the empirical methodologies frequently employed by academic researchers in their inquiries and studies.

SENTENCING OF SECURITIES FRAUDSTERS

Severe mandatory prison sentences are not the solution to the effective control of securities fraud. Reitz (1996) has already found that in jurisdictions with sentencing commissions and guidelines, commissions often observe that mandatory sentences and severe prison terms tend to be out of balance with the scaling of offences and punishment attempted by the guidelines. In his work on "Judge Frankel's Sentencing Commission", Tonry (1993) observed that mandatory sentencing guidelines tend to increase rather than eliminate sentencing disparities, and produce administrative bottlenecks. A pragmatic control measure will function more effectively in a discretionary system that has the capacity to include any and all theories of punishment on a case by case basis (Packer 1968). The goal of effective fraud control measures should aim to take the benefit and the profit out of securties fraud. The tremendous economic benefits associated with securities fraud far outweighs the risk of being sent to a federal prison. Two of the former federal inmates who are currently enlisted as confidential informants by our department told me that they viewed their stay at a federal detention centre, where they served their prison terms, as time away from the stresses and pressures of Wall Street. Although they were severely inconvenienced by being away from their families, one of them said-true or false- that he was confident that upon release, the treasures he had accumulated in foreign accounts would help erase the memories of his 16-months incarceration.

In her book on "White-Collar Crime 101", Jane Kusic (1989:6) discussed the case of two men in Florida who scammed 660 investors of $9.7 million through a fictitious coal-mining venture. Prior to what would have been a very lengthy trial, they pled guilty to setting up illegal tax shelters and evading tax laws. They were subsequently sentenced to five years in prison, but released two years early. None of their $ 9.7 million loot was ever recovered. Upon their release, they moved back into the same town where they had resided prior to incarceration. Although they had served prison terms for swindling many investors through the sales of unregistered securities, they were not stigmatised.

Kusic (1989:8) noted that one of them was given a beautification award by his resident county government for his new office complex. The other was interviewed and praised by the local television station for his generous gift to a local charity. With the $9.7 million that they bilked from investors, they quickly resumed their elaborate and expensive life-style and were soon accepted into their former communities.

Ivan Boesky, whom Fortune Magazine (1987) called "Crook of the year" also walked out of jail into the welcoming hands of his neighbours in 1989, having been allowed by the SEC to keep all but $100 million in fines and penalty of the over $1 billion he made through insider trading and arbitrage deals. Ivan Boesky was born in Detroit, Michigan in 1938. After graduating from Detroit School of Law, Boesky moved to New York City in 1966, and joined the brokerage house of Edwards and Hanly in 1972. In 1975, Edwards and Hanly went bankrupt, and Boesky, who had accumulated over $90 million in just five years, opened his own firm. In 1986, Boesky was indicted for securities fraud. He pled guilty in 1987, and was sentenced to two years of imprisonment. Boesky was released from prison at the end of 1989. Shortly after his release, he moved back to his home in Michigan, where his neighbours hailed him as a philanthropist. The Ivan Boesky and Michael Milken cases in New York are similar to that described by Kusic. Milken served only three years before he was released for good behaviour. He then went on to become the forerunner of the cancer foundation and children education projects throughout the country.

In the Baron and Wakefield cases, which were discussed earlier in the thesis, the fines that were imposed on some of the convicted stock swindlers amounted to a license to break the law. The penalties for securities schemes are routinely insignificant compared to the loot, and the federal minimum security prisons where most convicted securities fraudsters like Michael Milken and Ivan Boesky, who profited from insider-tips and non-public information, were confined are referred to as "Club Feds" (Kusic 1989:8). One of the most infamous "Club Feds" is at the Eqlin Air Force Base in Fort Walton Beach, Florida. This prison, without cells, resembles a well-kept student dormitory with four tennis courts. Such a "friendly" correctional facility, which is now home to Mr. Edward Norris, a former NYPD Deputy Commissioner and former head of the Baltimore Police Department, who later became the Superintendent of the Maryland State Police and was convicted in 2004 for abuse of government funds, is a far cry from the maximum security prisons where convicted organised crime figures are routinely incarcerated for the racketeering and violence offences for which they are normally convicted. As a perverse 'demonstration effect', such disparate correctional treatment, coupled with the criminal opportunities that the stock market offers, may have laid the foundation for the extension of organised criminality into the financial market. According to Williams and Savona (1996), the infiltration of organised crime into the legitimate sectors (including the stock market) and their relationships with political figures create a "superficial respectability, and facilitate corruption." Both of these ingredients were exploited in the absence of proportionate sanctions by traditional organised crime families and their Russian-origin counterparts to infiltrate the securities market in New York and advance their criminal enterprises.

CONCLUSION

Crime is difficult to be controlled, and government attempts to control securities fraud will continue to fail until there is a determined effort on the part of the stake-holders to strike a balance between illegal gains from criminal transactions and the certainty of proportionate sanction. Mandatory sentencing guidelines for securities violations are not the answer. The key to controlling securites fraud is by taking the profit out of the crime. Of the over one thousand cases that I examined for this project, the civil penalties in almost 70% of these cases were less than 20% of the total proceeds from the criminal transactions. Though this ratio may be better than for crimes as a whole (and does not include any civil litigation compensation or the fact that much of the proceeds of crime may have been dissipated and therefore is unavailable for compensation or fines), it indicates that the cost-benefit ratio favours securities frauds.

As we indicated earlier, a serious impediment to effective fraud control on Wall Street is lack of information sharing between criminal justice agencies. Many of the federal agents and NYPD investigators assigned to multi-agency joint task forces with whom I worked during the period of this research hinted to me that distrust between the investigators and failure to share information hindered their ability to gather timely intelligence needed for successful prosecution of cases.

Millions of investors are vulnerable to securities scams. While some become victims as a result of their own greed, others are victimized due to lack of education and complacency to telltale signs of a fraud scheme. Some investors become victims because they are both greedy and ignorant. Others, such as the elderly are targeted because they are more likely to have large sums of money at home from their retirement income and have little awareness of what to do with them.

Self-regulation can serve as an effective methodology for controlling some types of fraud on Wall Street. However, (Braithwaite 1984:101) cautioned that "Self regulation should be more than setting up internal policing systems." One of the obvious conventional remedies for control of securities fraud is to alter the environment that stimulates fraud by raising the amount of investor awareness and involvement on Wall Street.

Outreach programs by governmental agencies aimed at educating the public about fraud indicators in securities trade may raise awareness and help investors to be more skeptical when confronted with fraudulent schemes. There are all sorts of warnings on Internet web-sites at the moment. However, most organised crime scams are conducted via unauthorised firms, and since people generally do not have the capability or risk awareness/motivation to verify the authenticity of a firm, they are reliant on the proactive searches by regulators to try to squeeze the unauthorised firms out of the stock market.

Law enforcement agencies charged with controlling securities fraud should cooperate with each other internationally, both via direct contact and through international seminars and conferences. However, the challenge to reduce fraud on Wall Street is not only a law enforcement problem. The public also has a responsibility to report the intelligence about securities fraud that they stumble upon. Public involvement in the efforts against white-collar crime is crucial since it is the public that gets swindled. Institutions regulated under money-laundering statutes also have a duty to report suspected crime proceeds, though what is done with such reports is open to question.

Bringing securities fraudsters to justice is an indispensable component of the fraud reduction and control process, and this will require a re-assessment of the control and punitive philosophies of the Securities and Exchange Commission. The merits of regulatory strategies designed to combat securities fraud are a major feature of debates over the role of enforcement agencies in relation to stock fraud. These debates have moral, political, and ideological dimensions.

Criminal justice responses to most securities violations in the future will be reached through negotiations rather than through jury convictions and judicially mandated prison terms, and this will involve a change in the policing and control philosophies of control agents and a redefinition of the mandate of both the Securities and Exchange Commission and the industry fraud control agents. If given the proper and necessary tools, the securities industry is better positioned than law enforcement agencies to carry out (self) policing. The motivation for internal organised efforts aimed at fraud prevention is self–evident. No industry wants to endure the resulting agony and strain of an investigation into its activities by criminal justice agents. When a firm is under investigation, morale, productivity and profitability suffer as company executives and major players do little else but respond to subpoenas by the investigating authorities. The negative publicity resulting from such inquiry also tarnishes the image of the firm, though there has not been the kind of fall in investment activity that such negative publicity might have led one to expect. At least given a more significant risk of exposure and tough action from State and local as well as Federal agencies in the past, the risk of compromising a reputation for propriety and excellence that took the firm decades to build may constrain the firm to take the high ground and follow SEC guidelines in most cases.

If the SEC and law enforcement agencies charged with controlling securities fraud are to succeed, they must be responsive, adaptive, flexible, creative, and innovative. This means that they must be increasingly structured about projects or problems to be solved rather than existing as permanent, imperious hierarchies of offices, divisions and sections as they are under the existing SEC structure. Permanent hierarchical structures should remain for a variety of administrative purposes and for the affixing of final responsibility, but work itself must be organised more collegially on a team basis.

Generalist decisions should be reached through the pooling of the perspectives and techniques of a variety of specialists. Leadership must be increasingly stimulative and collaborative and less and less directive and reactive.

The role of the SEC as a regulatory agency and the mandates of law enforcement and prosecution are not mutually exclusive. Controlling corporate securities fraud on Wall Street involves a range of approaches including mediation, crime prevention and restorative justice. But keeping traditional organised crime families, Russian-origin criminals and freelancers out of Wall Street may require a RICO-type enforcement approach. Firms that are in economic trouble anyway may not worry about long-term reputational risk since they will not be around to benefit from it, so self-policing will not work for them or for the newly created boiler room scams.

The political will of the SEC is necessary to develop and implement the kind of sanctions that can be justified not only on the basis of deterrence but also to

underscore the moral and symbolic role of the agency in regulating the stock market and controlling stock fraud. The reconstruction of the SEC will be a time of turbulence as its values are protested and contested and new ones proposed. Whether it will lead to a better tomorrow or only to a different one is difficult to foresee, for our vision is blurred by the political waves driving Wall Street at any given time. But we can be certain that the role of the SEC as well as the methodology it uses to enforce financial legislations on Wall Street must be significantly altered before our goal to reduce securities fraud within the financial industry can be realized. Pressure from government agents may be necessary but cannot by itself, effectively deter crime.
It is my hope that this study does not remain purely academic but will lead to some basic re-evaluation of the methodologies currently employed by criminal justice agencies in dealing with the challenge that organised crime and fraudsters pose to the securities market. Some of the key findings of the study are discussed in the next and final chapter.

CHAPTER SEVEN

FINDINGS AND CONCEPTUAL FRAMEWORK OF THE STUDY

GENERAL OVERVIEW/DISCUSSION

This final section of the thesis provides the reader with a summary of the research by linking the key findings of the study with the theoretical framework, hypothesis and some of the research questions upon which the research was constructed.

As part of the Yale University studies on white-collar crime, Weisburd, Wheeler, Waring and Bode (1991) conducted a study of 1090 cases involving a range of offences generally deemed to be white-collar crimes. The data analysis is based on examinations of pre-sentence investigations for a sample of offenders convicted either through the plea-bargaining process or a jury trial for one of eight white-collar crimes in seven federal courts from 1976-1978 (i.e. before the organised crime involvement period reviewed in this study). The eight crime categories they examined were securities fraud, antitrust violations, bank embezzlement, postal and wire fraud, bribery, false/fictitious claims, credit/lending fraud, and tax fraud.

The findings of their study challenged the stereotypical view of white-collar offenders as wealthy and powerful persons who receive lenient treatment from the criminal justice agencies. Their findings suggest that most white-collar offenders were from the middle class, and were significantly above the poverty line, but were not from the upper economic and social class of society. In my project, some of the stock swindlers, especially the Italian-American fraudsters with close ties to organised crime, were from the lower educational and economic rung of society.

For several decades, the activities of Italian-American organised crime were limited to gambling, narcotics offences, loan sharking, extortion, fencing, robberies, burglaries, and other inter-personal crimes. Given the dark figure of crime, and problem in uncovering the criminal underworld, is it possible that organised crime groups were executing schemes on Wall Street prior to the 1980s, without the knowledge of the authorities? The possibility was analysed that the rise in organised crime involvement in securities fraud might be apparent rather than real. However, the organisation of police undercover operations and organised crime investigations, and the fact that at least some people would have reported out-and-out losses from stock swindles, makes that argument extremely unlikely. The possibility that organised crime involvement on Wall Street was known about but suppressed by law enforcement and prosecutors is also unlikely because the data do not appear in the records and there was no reason to suppress the data. Until recently, it was probably difficult for them to engage in stock fraud on a very large scale because they lacked a network of people that are drawn from different nationalities with specialized skills and expertise on how to prepare seemingly legitimate SEC or other regulatory fillings, even to the limited extent necessary for boiler room operations. Most members of the Italian-American crime families in New York appear to lack such specialized skills since the majority of them did not proceed beyond a high school education.

Biographic data on members of the Italian-American organised crime dating back from 1937 to 2004 stored by the NYPD's Organised Crime Investigation Division show that of the almost 1000 members of the five crime families in New York, only

37% completed a secondary education. Of the five crime family bosses, five "consiglieres" or counsellors, and 26 "capo regimes" or captains in New York, only 9% completed a high school education and only 2 went beyond a secondary education. So it was essential that they establish working relationships with fraudsters from other national origins in order to successfully execute their schemes on Wall Street. Formal learning beyond a primary education is needed in order to commit securities fraud as a broker on Wall Street because people are required to pass licensing examinations before they can conduct securities trading as brokers and stock specialists.

At least some Russian-origin criminals, on the other hand, appear to pass series 24 and series 27 licensing examinations with relative ease. Moreover, the length of time taken to acquire these skills and qualifications would be too long to make sense as a new "criminal investment". It also indicates a lack of historic vision on the part of traditional organised crime in failing to place their people in this scene, contrary to apocalyptic visions of organised crime's flexibility and competence. This accounts for one of the reasons why the Italian-American criminals are teaming up with their Russian-origin counterparts to get a piece of the Wall Street action.

The routine activity theory states that the probability that a crime will occur at any specific time and location might be viewed as a function of the convergence of a likely offender and suitable target in the absence of a capable guardian. The central premise in the rational choice theory is that people engage in crime primarily because a good opportunity presents itself. The evidence in the study suggests that Russian-origin criminals with a high taste for risk, purposely put themselves in contact with traditional Italian-American crime families to create the proximate opportunities for criminality within the stock industry.

Thus it is safe to argue that the need for more knowledge in this area of criminality led to the creation of relationships with other offenders, mostly Russian-origin criminals, the majority of whom are better educated. This observation appears to be valid because Russian-origin criminals are free riders who do not seem to have an established operational structure. The absence of a dominant organisational and operational structure gave Russian-origin criminals the flexibility to form networks and to establish joint operations with traditional organised crime members seeking to adapt or transfer old skills into new tools for new market opportunities. These relationships have facilitated and to a great extent, have helped to define the type of stocks that are suitable targets for organised crime.

Mr. O. F., a Russian-origin fraudster that I interviewed, told me that for the most part, "these relationships were short-lived. In several of these cases, co-offenders of other than Italian-American origin were used only once because the Italians felt that repeated return to the same source could increase the likelihood of detection."

In 1992, the Tri-State Joint Soviet-Émigré Organized Crime Project (TSP) was established as a consortium of law enforcement organizations in New York, New Jersey and Pennsylvania to gather data on Russian-origin organised crime in the United States. Using a combination of field methodology, archival research and survey research over six years, Finckenauer and Waring (1998) explored the intricate network structures in which Russian-origin fraudsters operate and concluded that they did not possess the defining characteristics of a traditional Italian-American crime family or Cosa Nostra. Neither were their members in fact predominantly Russians. Their study found that criminals labelled as Russian-origin operate mostly as individual specialists who do not necessarily answer to anyone in particular. The Russian-origin criminals can thus be described as evolving intricate criminal networks that are apparently responsive to specific criminal opportunities that present themselves.

Chambliss (1978) confirmed that "organised crime nationally and internationally consisted of hundreds or perhaps even thousands of networks that sometimes cooperated and sometimes competed with one another". The networks of Italian-American organised crime and fraudsters from other ethnic background that I observed for this project were formed primarily to enhance specific criminal transactions. The relationship ended once the scheme was completed, or with the arrest of the participants.

I also found that these networks were more likely than "made" members of Italian-American organised crime to plead guilty and cooperate with law enforcement authorities when caught. Perhaps they have neither the loyalty culture nor the expected disciplinary sanction structure to deter them from cooperation. This could make them risky and undesirable collaborators, perhaps a mark of Italian-American desperation to get into white-collar crimes. The data in this empirical work suggest that the decision of organised crime to move in on Wall Street is also influenced by the type of crime, shared perceptions, opportunity, news analysis about profitability, and vulnerability to organised crime influence. This confirms the essence of the rational choice model which postulates that an individual, a corporate body, or a criminal enterprise will take advantage of an offending opportunity if expected benefits exceed expected costs. The rational choice perspective is relevant to this study because the model is based on the notion that individuals have free will and act to maximize pleasure and minimize pain. Used as an explanation for criminal behaviour, rational choice theory maintains that crime is a conscious choice. This is important because according to interview notes, the traditional Italian-American crime families that were the subjects of this study made a conscious and reasoned decision to team up with Russian-origin fraudsters for Wall Street scams due to their inherent skill and qualification limitations.

I evaluated the data gathered during the period of this research and the findings are consistent with two of the four main arguments of the alien conspiracy theory that: 1. Organised crime members exhibit many features of legitimate corporate businesses. 2. Organised crime syndicates seek to penetrate legitimate enterprises by forming national and international networks. The Italian-American fraudsters who were the subject of this study complied with the same SEC registration requirements that are met by legitimate firms on Wall Street, and in most cases, established brokerage firms within the statutory guidelines of the SEC mandate, albeit with crooked intentions. These fraudsters also formed alliances with Russian-origin criminals to overcome their educational deficiency and lack of trading skills, which severely limited their access to Wall Street. However, this study could not find support for the contention in the alien conspiracy perspective that Italian ethnic or racial identity is key to determining membership or participation in traditional organised crime schemes. In fact, ethnic identity was irrelevant for stock schemes, unlike in traditional rackets where only "made" members with an Italian ancestry are allowed participation. For reasons given eartlier, the infiltration of the financial market demands the construction of alliances with other than Italian-American groups. Morash (1984) challenged the alien conspiracy theory, and argued that organised crime groups are not just drawn from members of a criminal underworld with similar ethnic identities, but some politicians, business people, and law enforcement officials also make up organised criminal groups.

Reuter (1986) uses the inherent bias in data collected by enforcement agencies to argue that law enforcement personnel look only for the evidence that reinforce their basic assumptions about organised crime. This research confirms Reuter's (1983) findings that organised crime operates in an open, informal, and loosely structured system, and not in an immutably bureaucratic structure with a clearly defined hierarchy. He repudiated the alien conspiracy doctrine by contending that strict inter-group discipline within organised crime is not the norm. Instead, he argued that it is competition, treachery, communication breakdowns and other forms of disorganisation that seem to be more characteristic of organised crime enterprises, and not the ingenious corporate image that we now hold of it. As a divergence from the conspiracy model, Block (1979) and Reuter (1983) proposed that small and fragmented enterprises, instead of large corporate syndicates, tend to populate illegal markets. Ruggiero (2000:6) noted that "Individuals with no previous criminal record may constitute the majority of employees in the drug economy, but paradoxically their non-professional and disorganised illegal acts end up benefiting their professional and organised employers.

The fourth argument in the alien conspiracy model is that organised crime groups are the primary corrupters of public officials. But Gardiner (1970), Chambliss (1988), Gardiner and Lyman (1978), Potter and Jenkins (1985), and Block and

Scarpitti (1985) all argued that the conspiracy model overplays the role of organised criminals as the corrupters of public officials because some public officials were not innocent and often sought out opportunities to increase their income. Some other studies suggest that organised criminals are indeed those who occupy position of public trust (McCoy, 1972; Kruger, 1980; Lernoux, 1984; and Block 1986). Jenkins and Potter (1984) critique the alien conspiracy theory for overstating and misrepresenting the role of ethnicity in determining the structure of organised crime.

Membership in securities schemes is drawn from non Italian-American members, unlike loan-sharking, gambling and waste management operations for example, where key players have to be males of Italian descent, and in most cases, are required to be "made" members of one of New York crime families. The degree of complexity and the organisational structure of securities scheme make legal liability of these participants difficult for prosecutors to clearly delineate and establish. These are some of the factors that led organised crime to Wall Street in the first place.

Like a typical organised crime family, stock fraud is dominated mostly by men, although, in several of the cases that are examined in this work, women appear to be moving in on the Wall Street fraud wagon with increasing frequency, and the actors are very diverse. A typical securities fraud scheme consists of a stock specialist, a secretary, a principal, or broker-dealer, an investment adviser, a floor broker, a banker, a firm with an established name fronting for the fictitious firm, a registration statement with the SEC, an IPO, stock promoters and analysts, brokerage houses, hundred of cold-callers, as well as organised crime families, which provide the muscle. The complicated and tangled web of activities needed for stock schemes make ethnicity irrelevant.

The notion that organised crime is a highly bureaucratic and monolithic structure formed exclusively by Italian-American fraudsters to advance a criminal enterprise also loses pertinence when its involvement in the securities market is observed. The result of this study rejects the conception of organised crime as a hierarchical organisation characterised by specialisation of function and division of labour. Several of the securities fraud cases that are examined in this thesis involve the development of network-type partnerships by Italian organised crime families with Russian-origin and Albanian fraudsters with hardly any chain of command, and with whom the principal architects of the schemes had no prior relationship.

In an effort to avoid longer prison sentences associated with interpersonal or violent crimes, the newer and younger members of organised crime are opting for criminal careers in white-collar crime and other durable and in some cases, legitimate enterprises to generate income without much allegiance to their previously fundamental organisational structures.

In 1979, Alan Block conducted a historical analysis of the illicit cocaine trade in New York during the early 1900s. The result of that study showed that illicit activities were not "coordinated by any particular organization, but by criminal entrepreneurs who formed, reformed, split, and came together again as opportunity arose" (Block 1979b).

By way of comparison, organised crime on Wall Street has adopted the qualities of flexible organisations by bringing together networks of criminals who are willing to exploit the loopholes within the securities market. It is the flexibility and fluidity of organised crime's involvement on Wall Street that enables it to adapt to changing environmental demands. The Mafia has not always been fluid and flexible in their organisation and operations (Paoli 2003). But flexibility and adaptability to changing market forces and threats from criminal justice agencies is an inevitable and rational path to their continued survival.

Social contact in fraud schemes on Wall Street is often between relative strangers who have little or no emotional involvement with each other. The traditional crime families on the other hand are linked and arranged around the kinship institution, which we think of as the family, including parents, children and others. Although the five traditional crime families continue to exist in New York, the hierarchical structure that enabled organised crime leaders to have a clearly delineated span of control is severely weakened in the stock market where the leaders of the five crime families have hardly any knowledge, no comparative advantage, no skills and no tools of the trade.

Legitimate opportunities for committing stock fraud have been blocked to reputed members of organised crime since they cannot legally open a brokerage firm without passing broker-dealer licensing examinations. So criminal associations are formed with other groups that either have access to Wall Street or are in close proximity to the stock market to overcome licensing hurdles and gain entry into the financial market. However, large investment banks (who may also be committing different sorts of scams themselves) would not wish to associate themselves with Mafia-type people – especially not for self-liquidating swindles, thus restricting organised criminals to the lower end of the financial market.

Their entrance into this new environment has led to new social investments and in some cases, new – albeit temporary - institutional relationships. Despite the temporary nature of securities fraud networks, crime pattern theory submits that the way people interact with their physical environment can produce opportunities for either more crime or less crime (Felson and Clarke 1998).

The stock market boom since the early 1980s transformed the financial sector into one of the primary engines for the accumulation of wealth. Naturally, people gravitate to environments that are perceived as rewarding, and so do organised crime members. The stock market became even more attractive as RICO enforcement severely restricted their ability to conduct business as usual in traditional illicit markets. Situational opportunity theory argues that an offender's opportunity to commit a crime has two aspects: target attractiveness, which includes value and portability; and accessibility, which includes ease of physical access, visibility, and absence of sufficient guardian. According to an organised crime associate who is a registered informant with the Business Integrity Commission, the five Italian-American crime families moved in on Wall Street because apart from RICO, competition in the drug market from the Latin Kings, the Blood and the Crips gangs in New York reduced opportunities for profit, but increased safety risks for traditional organised crime in the drug market. In the past, one competitive advantage the Italian-American criminal groups had over other ethnic groups was monopoly in corruption of public officials. But internal integrity and anti-corruption measures by the NYPD Internal Affairs Bureau since the Knapp Commission submitted its report on police corruption in 1972, have closed some of the corruption hazards that gave organised crime access to law enforcement officers and public officials.

Violent street gangs from other ethnic groups in New York have fought their way into several street corners that were once controlled by organised crime associates for drug distribution in New York City. Today, drug distribution in the entire area of Astoria Queens, the Bushwick and Brownsville sections of Brooklyn, the Hunt Point section of the Bronx, and most of Manhattan from 230th, Street in Washington Heights to 23rd, Street in Midtown Manhattan are controlled by Hispanic and Black drug distributors, while the areas around Canal Street and the Lower East Side are now controlled by various Asian gangs. These were areas once controlled exclusively by Italian-American gangsters.

So the journey to the stock market was therefore born out of a rational attempt to diversify their activities in order to maximize benefit due to competition in other markets that they once controlled. According to the rational choice perspective, people weigh potential benefits against possible cost and decide rationally whether to commit crime (Clarke 1980). Following that argument, one can appreciate why traditional Italian-American organised crime is gravitating towards the stock market. Securities fraud appears to provide the greatest benefit, with the least amount of harm (although their expansion into the financial market has been slowed by cultural resistance among older Mafia members who are threatened by the shift towards areas of which they have insufficient knowledge).

Whether or not displacement occurs depends on the ease with which offenders can obtain the same criminal rewards without increasing the (subjectively defined) risk of detection.

The study's data on prosecution trend and punishment for securities fraud and interpersonal crime suggest that organised crime members receive and serve longer prison terms for interpersonal crimes than they do for stocks fraud (low = 1- 49 months, medium = 50-100 months, high = 101 months- life sentences). As shown by the analysis below, 62.9% of securities fraudsters received (low) prison terms, 25.8%

received (medium) prison terms whereas only 11.3% of them received the (high) prison terms. On the other hand, of the organised crime members charged for commiting interpersonal crimes, only 3.7% received (low) prison terms, 25.9% received (medium) prison terms, while 70.4% of fraudsters charged for commiting interpersonal crimes received (high) prison terms.

Mr. C. M., an organised crime member told me during my interview session with him that " we were getting hammered for small pocket change from burglaries when the guys on Wall Street were getting away with murder." "Do you mean homicide"?, I asked. He replied, "no, I mean they are getting away with millions for 30 days of community service and three months of probation." One of the kels, a surveilance tape planted near the home of a member of the Genovese crime family, captured a conversation in 1997 in which an organised crime caporegime said "These "five zeros" are really hurting our business. We may be better off on Wall Street." Law enforcement agents are referred to as "five zeros" by organised crime groups in New York. The research evidence suggest that as law enforcement activities increased, relative to the strict application of the RICO statute against traditional organised crime groups, these fraudsters began conducting risk analysis, and seeking new markets to minimize harm and maximise reward.

Table 4: Offence Type by Punishment

Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
offence type * punishment	116	100.0%	0	.0%	116	100.0%

offence type * punishment Crosstabulation

			punishment			Total
			low	medium	high	
offence type	stock fraud	Count	39	16	7	62
		% within offence type	62.9%	25.8%	11.3%	100.0%
		% within punishment	95.1%	53.3%	15.6%	53.4%
	interpersonal crime	Count	2	14	38	54
		% within offence type	3.7%	25.9%	70.4%	100.0%
		% within punishment	4.9%	46.7%	84.4%	46.6%
Total		Count	41	30	45	116
		% within offence type	35.3%	25.9%	38.8%	100.0%
		% within punishment	100.0%	100.0%	100.0%	100.0%

Chi-Square Tests

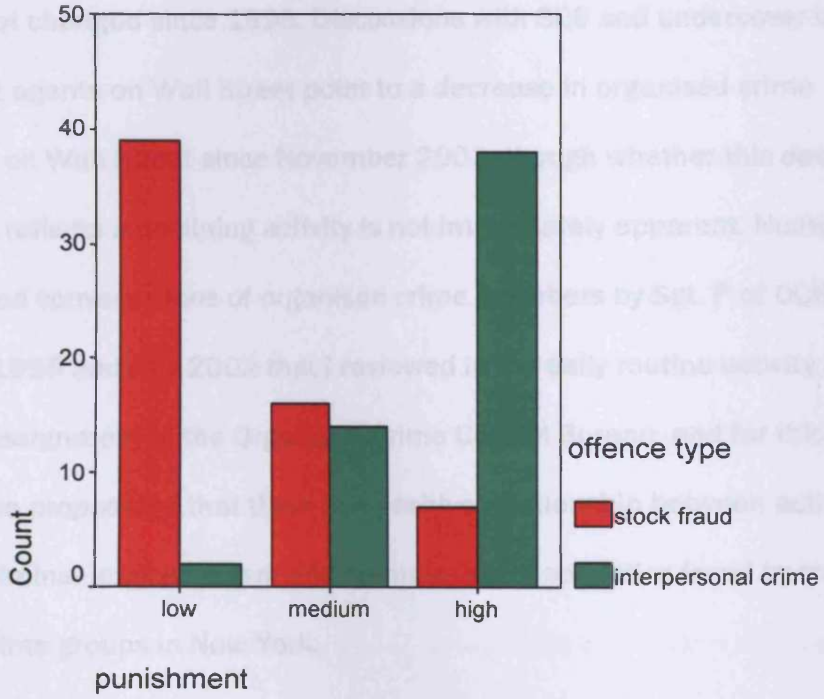
	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	54.587[a]	2	.000
Likelihood Ratio	63.920	2	.000
Linear-by-Linear Association	54.081	1	.000
N of Valid Cases	116		

a. 0 cells (.0%) have expected count less than 5. The minimum expected count is 13.97.

The above chi-square suggests that there is a significant relationship between punishment and the type of offence that organised crime members commit.

Graph

Figure 4: Offence type by Punishment



I examined whether the infiltration into the stock market had something to do with criminal justice response and severe sanctions for traditional rackets or whether it was merely a product of a new business strategy. The ethnographic interviews and results from the OCID surveillance tapes appear to support the hypothesis that there is a positive relationship between law enforcement activities and the expansion of traditional organised crime activities into New York's financial market.

When I began this project in 1998, the NYPD Organised Crime Control Bureau had 69 active (open) investigations into traditional organised crime involvement on

Wall Street. In January 2004, the Organised Crime Control Bureau, my current command of assignment only has twelve (12) open investigations of the five organised crime families' activities on Wall Street, yet the number of OCID investigators assigned to investigate traditional organised crime involvement on Wall Street has not changed since 1998. Discussions with SEC and undercover law enforcement agents on Wall Street point to a decrease in organised crime involvement on Wall Street since November 2003, though whether this decline in police cases reflects a declining activity is not immediately apparent. Numerous hours of taped conversations of organised crime members by Sgt. P of OCID between September 1995 and July 2002 that I reviewed in my daily routine activity at work in my current assignment in the Organized Crime Control Bureau, and for this project, confirmed the proposition that there is a positive relationship between activities within the criminal justice system and commission of securities fraud by traditional organised crime groups in New York.

In 2003, 14% of traditional members of Italian-American crime families in New York cooperated with criminal justice agents who were handling their fraud and interpersonal crime cases. The cooperation of organised crime members with the authorities is either a sign of weakness, a survival technique, or an adaptation to new challenges (Jacobs 1999). Law enforcement surveillance tapes point to a general drop in traditional organised crime controlled boiler-room type swindles. But it is not clear if the decline in boiler-room schemes is caused by the dwindling market size. It is doubtful that the situational opportunities in the stock market have been reduced, though it is possible that there may have been a shift in the subjective and objective risks of early intervention to close down such businesses before they had yielded the massive profits experienced in the past. If there is a drift away from traditional organised type swindles on Wall Street, it may be caused by changes in the benefits for executing such schemes today compared with the early 1990s when the Baron, HealthTech and Wakefield scams were carried out. Most of the active swindles in the financial sector today are set up by legitimate investment and brokerage houses on Wall Street.

It will be difficult to know with certainty the reason for the seeming decline, but it is conceivable that loss of investors trust in the market, and public attention to securities fraud involving Enron, WorldCom, Tyco, Merrill Lynch and Martha Stewart and other major financial scandals during the past three years, including the ongoing dual-agency investigations of the New York Stock Exchange and Mr. Richard Grasso, its former chairman, may have had something to do with the apparent decline of traditional organised crime activities within the securities market in New York. The extensive and prolonged media coverage of the scandals may have caused investors to be better-educated and more cautious in making investment decisions. It is also probable that organised crime activities on Wall Street have not declined and the reduction in active police cases on Wall Street may be caused by the major shift of investigative resources by all law enforcement agencies in the United States from other focus areas to terrorism since the attack on the World Trade Center in New York on September 11, 2001. The Spitzer/Morgenthau compliance approach may also be drawing attention from the organised crime type on Wall Street to Martha Stewart, Enron and Tyco type cases. Crime analysis based on criminological theory offers a systematic and empirical approach to analysis that may yield more consistent results with a deeper level of explanation.

CONCLUSION

Organised crime members on Wall Street are reasoning criminals who manipulate the financial market with the aim of decreasing the risk and effort for securities fraud while increasing the reward. The securities market in New York is a crime hot spot. Crime hot spots are generally understandable when considered in terms of the setting, the normal movement patterns, the distribution of crime generators and crime attractors, the situational characteristics of places, and the ecological labels attached to different places. According to Brantingham and Brantingham (1999) crime hot spots are influenced both by the settings created through legislation and policymaking as well as social and economic conditions. The distinctive characteristic of the stock market makes it vulnerable to organised crime infiltration. Weisburd, Wheeler, Waring and Bode (1991), Rothman (1982), Wheeler, Mann and Sarat (1988), Zeitz (1981), Cressey (1973) and Levi (1981) have all found that the white-collar crime is attractive to fraudsters because the risk of detection, prosecution and conviction is less compared to the risk faced by criminals who commit interpersonal crimes. All of these researchers would agree that it is imperative to examine each type of crime separately in order to fully appreciate the essence of the over-all phenomena of white-collar crime. This is one of the reasons why securities fraud is the focus of this research endeavour.

Moreover, the stock market is especially vulnerable to fraud because it is a place where interactions take place between investors, victims, financial houses, and fraudsters posing as investors. These interactions between market players on Wall Street have the potential for significant monetary rewards. Hence, criminals striving to make quick money prefer securities fraud to armed bank robberies because stock fraud is a lot more complicated in terms of assigning legal responsibility and fraudsters usually get their hands on the money long before they are stopped. Yet, "criminal justice only looks backwards at fixing blame, not forwards in strategic analysis and prevention" (Levi 1998). Hence, it is impossible for decision-makers to fully understand and address securities fraud without thorough empirical criminological studies. This may involve altering the current budgetary formula where 60% of local police and prosecutors' enforcement budget are devoted to addressing what is called "the 7 major index crimes" with little allocation at the federal level and no budgetary allocation at the state level for empirical studies designed to study ways to effectively combat white-collar crime.

Cressey (1973) observed that people are motivated into crimes involving trust violations, such as embezzlement and employee theft, for three specific reasons. First, the potential embezzler had a financial crisis or need which he or she felt could not be shared with anyone else. Secondly, the would-be embezzler saw the violation of his or her trust as an opportunity to solve the financial problem. And lastly, the potential embezzler rationalized the act to himself or herself before commission in words that do not conflict with a self-image of being a trusted person. According to differential association, individuals violate the law because their social world contains multiple moralities, both anti-criminal and pro-criminal (Cressey 1986). Individuals associate differentially with the two kinds of values, and their behaviour depends on which set is dominant in their life experiences.

Studies of the relationship between attitudes toward theft and size of victim organisation, price control and rationing during World War II, and the labour relations law compliance provide support for the theory of differential association. Cressey

(1986) further argued that the notions that portray crime as business, necessity as justification, and laws as socialistic or counterproductive have helped to neutralize the unethical acts of business fraudsters. People may also disobey the law because they have learned that one can be moral and criminal at the same time.

These moral or immoral definitions of criminality are learned primarily in intimate personal groups. Such learning may include the idea that it is all right to steal because everybody else is doing it. The ideology of individualism has also encouraged each citizen to disregard social welfare in the interest of selfish satisfactions. In a market environment that is besieged by self-centeredness, regulatory laws and even criminal statutes are often viewed as implementations of the desires of one's competitors, not as a codification of ethical standards of conduct (Cressey 1986). Some of the fraudsters operating on Wall Street have brought these sets of deviant ethical codes described by Cressey (1986) with them to the New York's financial market. Others-especially those previously involved as organised criminals or professional fraudsters-presumably would have fewer ethical problems to resolve.

The organisation of securities fraud is fluid and constantly shifting because with the introduction of a new initial public offering comes new opportunities for a different way of manipulating the market, usually with different categories of investors. To the fraudsters, Wall Street is nothing other a work location where they conduct business, just as legitimate workers who are engaged in different types of occupations for the purpose of making money. The stock market serves as a link between the underground economy and the legitimate market. However, in stock fraud, the relationship and contact between offenders differ significantly from the seemingly bonding relationship one observes among members of a drug ring.

This is consistent with the basic thinking of enterprise theory that enterprise takes place across a spectrum that includes both business and crime (Smith 1980). The primary goal of securities firms on Wall Street is to generate high returns for their investors and ensure their firm's organisational stability. The goal of traditional organised crime fraudsters on the other hand is to create new markets and generate sustainable income for themselves and the crime families with which they are affiliated. The securities market is a trading house where stocks are exchanged for liquid assets, and where distribution of earnings take place. The market processes in this legitimate sector and the aspiration of corporate entities and criminal organisations are not exclusive categories. It is for this reason that this thesis challenges the alien conspiracy model which puts a wedge between fraudulent activities of legitimate firms on Wall Street, and the craft of traditional organised crime members within the securities market. The alien conspiracy perspective is shaped by assumptions that crime and business were distinct categories of behaviour. This thesis argues that this is not the case. Conspiracy is not peculiar to criminal markets. It is an important tool utilised by major financial houses such as JP Morgan and Citigroup, as indicated by recent actions of the New York State Attorney-General against legitimate brokerage and clearing houses on Wall Street.

Strain theory postulates that criminality is the product of stress generated by challenging, straining and depriving circumstances in someone's life. In his application of strain theory to empirical studies, Agnew (2004, 2001) focused on strain and emotional deprivation in interpersonal relations, and strain from failure.

Merton (1938) discussed strain produced by cultural and social expectations and Bernard (1990) focused on strain caused by poverty, economic inequities, and lack of material wealth. This thesis theorizes that the movement of organised crime from traditional rackets to the financial market was influenced both by law enforcement actions and excessive sanctions for racketeering activities as defined in the RICO statute.

Agnew (2004, 1992) identified several conditions that lead from strain to crime. These categories are:

1. The magnitude of the strain.
2. How recently it began.
3. How long it has lasted.
4. The extent to which different straining stimuli converge.

If we examine the key hypothesis and research questions in this study within the framework of the general strain theory, we find that the magnitude of strain on traditional organised crime through RICO prosecutions, convictions and sanctions have been enormous. Since 1981, when criminal justice agents began applying the Racketeer Influenced Coorupt Organization Act in prosecuting traditional Italian-American crime families in New York, every leader of each of the crime families in New York has been convicted and, in all but two cases, were given life sentences. John Gotti, Sr. the late "boss" of the Gambino crime family died in a federal prison in Marrion, Illinois while serving a life sentence. Vincent Gigante, the former head of the Genovese crime family is currently serving a life sentence. Mr. Joseph Massino, the "boss" of the Bonanno crime family was convicted and given a life sentence in 2004. Mr. San Filippo and Mr. Victor Orena of the Colombo crime family are both serving life sentences. Mr. Peter Chiodo and Mr. Anthony Casso of the Luchese crime family, Mr. James Ida of the Genovese crime family, Mr. Anthony Aeillo and Mr. Antonio Aeillo of the Bonanno crime family are all serving life sentences for RICO convictions.

Some of the taped conversations upon which a federal jury convicted the head of the Bonanno crime family in 2004 confirmed that their expansion into Wall Street resulted from the challenges they faced from law enforcement agents in areas of activities covered under RICO. In one of the taped conversations, Mr. Massino is heard asking a member of the Russian-origin criminal based in the Brighton Beach section of Brooklyn, New York in 1999 if he has "what it takes to take over Wall Street." The Russian-origin criminal replied, "I wouldn't be here if I thought it couldn't be done." Massino was however, convicted, not for the stock scams that came up in testimonies during the trail, but on the testimony of 67 year-old Frank Lino, a high ranking member of the Bonanno crime who cooperated with government agents to avoid a life sentence. Mr Lino testified as a prosecution witness, and tied Mr. Massino to several murders during the trial. Crime classification and sanctions influence the choice of criminal enterpreneurs.

But in his repudiation of an earlier version of strain theory, Sutherland (1947) argued that criminality is not the product of stress that society imposes on its members, but rather that criminal behaviour is learnt in interaction with others within intimate personal groups. Individuals become criminal if criminal associations and definitions unfavourable to law violation exceed the non-criminal patterns (Tarde 1903; Sutherland 1939). The frequency, duration, priority and intensity of the associations also play significant roles in shaping the outcome and direction of ones behaviour (Sutherland and Cressey 1960). Sutherland's works, White-Collar Crime

(1940, 1949) and The Professional Thief (1937), disputed the notion that criminal behaviour is produced by economic conditions in lower class neighbourhoods.

According to Sutherland (1940), crime is produced when people learn deviant values and adopt criminal behaviours from others in a society, and that this can occur in any culture. Although I am not discarding social theories of crime causation, the data in this study, as I mentioned earlier, point to a rational decision on the part of organised crime fraudsters to seek out new income streams in the stock market. The data confirm that organised crime moved in on the stock market because of the perception among organised crime members that the risk that the securities market presents is significantly lower than when compared to the risks that they face for committing violent crimes.

The stock market is an environment where it is believed that formal agents of social control have little influence. Recent works on strain theory by Robert Agnew (2004, 2002, 2001,) noted that crime is most likely to occur when the constraints against crime are low and the motivations to commit crime are high, especially among juveniles who have been victimized or whose friends and family members have experienced vicarious physical victimization.

Agnew (2003), Waring, Scully, and Rose (2003), Agnew, Brezina, Wright and Cullen (2002), Agnew (2001), and Weisburd and Mazerolle (2000) found that strains were most likely to lead to crime when they 1) were seen as unjust, 2) were seen as high in magnitude, 3) were associated with low social control, and 4) created some pressure or incentive to engage in criminal coping. The fraudsters in this study felt that the mandatory sanctions under the RICO statute were excessively harsh, given the routinely lenient sentences and civil penalties given to individual and corporate securities scammers on Wall Street.

Increased risk in other illicit markets since RICO racketeering legislation, and the realisation that rewards from violent crimes are no longer commensurate with punishment, stimulated organised crime to seek new criminal opportunities that the legitimate sector provides. However, some of the older Mafia members are resistant to the movement into the securities market because it is difficult for older dogs to learn new tricks and perhaps also because they see it as the "thin end of the wedge" to the decline of the importance of "The Family" as a social unit and way of life (Paoli, 2003). Also, a surveillance tape that was recorded by a detective assigned to the investigation of the Genovese crime family in November 2003 in Bronx, New York, showed Mr. Dominick Cirillo instructing the major players in his crime family not to allow their traditional "base to be eroded by this Wall Street craziness". Despite the seeming preference of some of the older Mafia figures to traditional organised crime activities, Wall Street looks very attractive to the younger generation of Mobsters.

The evidence from surveillance tapes and testimony of several cooperating witnesses at the Massino trial support the hypothesis that as law enforcement actions increased with respect traditional Italian-American crime families, these fraudsters began seeking newer sources of income and sanctuary in the stock market.
Sustained enforcement action under Rico during a period of twenty-four years for racketeering activities at a time when the stock market was receiving little attention from the justice agencies served as pre-conditions that led organised crime to the securities market. However, it is conceivable that other factors, such as generational

changes and changes in market conditions and rewards could have also affected the decision to change operational strategies.

The stock market provides increased opportunities for organised crime to engage in criminal behaviour (Felson 1998), and this observation is consistent with the arguments of the rational choice model. Rational choice theory assumes that organised crime groups on Wall Street are already motivated offenders who will act criminally in a situation given the presence of a suitable victim and the absence of a capable guardian.

Although the rational choice model (Cornish and Clarke 1986) appears to be most relevant to this study, it is by no means, definitive. In its present form, rational choice is a loose collection of ideas expanding on three basic assumptions that criminals strive to maximise their gain, minimise pain, and engage in criminal behaviours only after they have determined that the benefit outweighs the disadvantages. But given the illiteracy of members of traditional Italian-American crime families and the temporary relationship that existed between them and their Russian-origin counterparts in this study, it is difficult to wholly support the underlying assumption of rational choice that all of their Wall Street scams were executed after careful and thorough impact assessment. These individuals may simply have had a high appetite for risk and greed.

Finally, strain theory is woven into the rational choice model which is not directly related to strain. Enterprise theory can be linked both to structured legitimate organisations as well as the bureaucratic elements of criminal organisations.
Smith (1980:376) has already found that a number of analytic advantages are gained by linking the conspiracy model with enterprise theory. If that happens, the "static

limitations of conspiracy's closed-system origins can be replaced by the dynamics of continuing economic activity," which serves as the corner stone of enterprise theory.

The criminological theories or explanations of the behaviour of organised crime groups that are the subject of this study appear to overlap. It is therefore reasonable to conclude that the field of criminology will benefit from an explicit integration of all of these theories in explaining organised crime's diversification of activities from traditional rackets to the New York's financial market.

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APPENDICES

Appendix 1

DEFINITION OF STOCKS

A stock is defined as an instrument that signifies ownership position in a company.

TYPES OF STOCKS

Companies whose stocks are publicly traded can issue either a common stock or a preferred stock. Preferred stock holders have a superior right over common stock holders when a company's dividends are declared. Preferred stock holders also have a prior claim over common stock holders upon the liquidation of a company. All stockholders, irrespective of the type of holding are entitled to certain rights and privileges including property rights to stock certificates. A stock certificate constitutes physical evidence of ownership.

The certificate identifies the name of the issuing corporation, the number of shares represented by the certificate, the name of the registered owner, the signatures of the corporation's officers authorized to sign the certificates and the names of the registrar and transfer agents.

The transfer agents are charged with the task of ensuring that properly endorsed certificates presented for transfer are cancelled before issuing new certificates to the new owner. It is also the responsibility of transfer agents to maintain an up to date record of the name and address of each registered shareholder and the number of shares owned by each shareholder. This function is important because a corporation could opt to split its stock at any time. A common reason for stock split is to attract more investors by reducing the market price of the stock.

A stock split can be executed either in the form of a “forward split” which increases the number of shares and decreases the price of the stock, or as a “reverse split”, which creates a smaller number of shares and increases the market value of the stock.

Appendix 2

CLASSIFICATION OF STOCKS

There are six categories of stocks that are traded on an organized exchange and in third markets in the United States. These stocks are classified as Blue Chip, Growth, Defensive, Income, Cyclical and Seasonal Stocks, and Warrants.

Blue Chip Stocks are high-grade stocks of reputable companies with long, consistent and unbroken records of earning and dividend payments.

In other words, they are common stocks of very large, well-established, stable and mature companies with sound financial strengths.

Growth stocks are issues of aggressive and research-minded companies whose sales, earnings, and share of the securities market are expanding or growing faster than the general economy and the industry average. Companies, which issue growth stocks usually, retain most of its earning to finance expansion and therefore pay little and sometimes no dividend to its investors.

Defensive stocks are issues of companies, which have a strong resistance to economic recession. These stocks are characterized by a degree of stability during periods of global uncertainties or declining economy, and are generally offers of public utility companies such as gas and electricity, or essentials such as food and beverages.

Income stocks are issues of corporations, which pay higher returns to its investors than the prevailing market price and higher earnings than other investments with similar risks. Income stocks are generally attractive to older people and retirees who buy stocks for current income. Most public utilities companies issues are income stocks.

Cyclical stocks are issues of firms whose earnings fluctuate with business cycles. When the economy is strong, business conditions for cyclical companies improve, making the companies profitable. This trend could lead to a rise in the prices of their common stocks. But when economic conditions deteriorate, the business activities of these companies drop remarkably, thus creating a significant decline in the prices of the stocks tendered by these cyclical companies.

The steel industry, cement factories, machine tools and the automobiles industry are examples of companies that issue cyclical stocks.

Seasonal stocks are issues of companies whose earnings have a tendency to rise or fall with the various seasons of the year. The stocks of retail companies are good examples of seasonal stocks. The sales and profits of these companies will generally increase at certain times of the year, such as Christmas or at school opening and would usually drop at uneventful periods of the year.

Irrespective of the type of stock to be traded, all companies wishing to trade its stocks publicly in the United States must fulfill several conditions and meet certain criteria, including the registration requirement, before their stocks are authorized for listing.

Appendix 3

REGISTRATION PROCEDURES

The receipt of a registration statement by the Securities and Exchange Commission (SEC) is usually followed by a 20-day cooling off period to enable the agency to review the information that was submitted on the filing date. Under the Securities Act of 1933, the following conditions must be met before a security can be registered.

1. A description of the issuers business.
2. The share holdings of senior officers, directors and underwriters.
3. Identification of people holding at least 10% of the company's securities.
4. Biographical data on the company's officers and directors.
5. The amount of money raised through Stock and bond offering by issuer.
6. Specific purposes for the proceeds, and
7. A certified financial statement.

If the SEC deems that registration statements have material misrepresentations or omissions, it can issue either a stop order thus prohibiting the sale of the securities or it may issue a deficiency letter, which will postpone the effective date of the offering. During the period of postponement, which is referred to as the "cooling off period," a preliminary prospectus called "red-herring" is prepared by the issuer informing potential investors that a registration statement which has not yet become effective has been filed with the SEC. It should be noted that the SEC does not evaluate the merit of initial public offering (IPO).

The agency's mandate is to ensure that investors are given full, accurate, fair and adequate disclosures of all material information relevant to the offering. The purpose of the red herring is to assess the degree of interest that potential investors have in that offering. This indication of interest is neither binding on the potential investor nor is it binding on the would-be issuer, who is disallowed from making solicitations until the registration statement has been approved.

During the cooling off period, the issuer is also required to register the offering in the state where the security will be traded. This is a requirement under state securities laws commonly referred to as the "Blue Sky Laws."

Under the "Blue Sky Laws," states reserve the right to approve or disapprove the sale of a security within their jurisdictions.

Immediately following the approval of the registration statement, a final prospectus must be distributed to prospective investors within twenty-five days of the effective date that the securities would be listed on the New York Stock Exchange (NYSE) or traded over the counter on the National Association of Securities Dealers Automated Quotation System (NASDAQ).

An over-the-counter stock, which is ineligible for listing on the Nasdaq require a 40-day notice if the stock has been previously issued, or a 90-day notice if the corporation has not previously issued the security.

Appendix 4

EXEMPTED SECURITIES

There are a number of securities, which are exempted from the registration and prospectus requirements under the Securities Act of 1933. The exempted securities are:

1. Securities issued by the United States government or its agencies.
2. Securities issued by municipal governments.
3. Short-term corporate debt instruments whose maturity date is 270 days or less.
4. Securities that are issued by charitable and other not-for-profit organizations.
5. Securities issued by domestic banks and trust companies, excluding bank holding companies.
6. Securities issued by certain small business investment companies, exempted by federal laws.

Securities offerings, which are not expressly exempted from the registration requirement as above may also be exempted under certain sub-sections of the 1933 Act. Under normal circumstances, firms wishing to raise capital by issuing securities, may do so after meeting the underwriting criteria using the services of an investment banker.

But under Regulation D of the SEC rules, the issuer of a security can avoid both the underwriting cost and the SEC registration requirement by engaging in a private placement.

SEC Regulation D exempts registration for private placements of securities by a firm under the following conditions.

1. The issuer must have reasonable cause to believe that he or she is dealing with a sophisticated investor who is capable of evaluating investment risks.
2. The buyer must have access to the same information that is laid out in a prospectus or in an offering memorandum.
3. The buyer issues an investment letter, to the issuer, promising not to make a quick sale of the stock
4. The securities are not sold to more than 35 non-accredited investors.

An accredited investor is defined as a financial institution, a large tax-exempt plan, a private business development company, or an individual with a net worth of one million dollars, with a gross income of two hundred dollars for each of the previous two years. These earnings should be sustained at this level or increased annually.

Securities and Exchange Commission Rule 147 exempts intrastate offerings, or securities sold within the jurisdiction of a state, provided the mechanisms or apparatus of interstate commerce is not employed in the sale of the offering.

Intrastate offering exemption cover companies that meet the following conditions:

1. 80% of the firm's gross revenue must be derived from transactions within one state.
2. 80% of the firm's assets must be situated within one state
3. 80% of the proceeds of the issue are used to expand facilities within that one state.
4. All of the purchasers (100%) have that state as their principal state of residence.

The exemption which has been most exploited by organised crime is the Regulation A offering exemption.

Regulation A offering is a new offering of $500,000 or less, during a 12-month period. Although this offering does not have complete exemption, the issuer will be exempted upon filing an offering statement with the SEC and providing potential buyers with an offering circular. Some of the advantages of the Regulation A offering, sometimes referred to as a small issue exemption, are the shorter amount of time needed for the preparation of required documents and the relatively insignificant legal and filing fees when compared to other types of applications.

SEC Rule 144 exempts certain traders from the underwriting provisions of the Securities Acts of 1933, which requires underwriters to meet the registration requirement. Thus the rule allows underwriters to sell restricted and control stocks without registration. A restricted security is a stock that is not registered, and which is usually acquired by an investor through a private placement. Control stocks are stocks that are acquired by an officer or director who is associated or affiliated with the firm. A dealer or any individual who is engaged in the selling of securities must notify SEC at the time he places the order with the broker.

However, notification is not required if the sale does not exceed 500 shares, and the amount involve is ten thousand dollars or less. Some of the cases that would be discussed in the next chapter involve the exploitation of these exemptions by organized crime groups.

Other loophole in SEC regulations, such as the stabilization clause has also been exploited by organized crime figures.

For example, some of the new issues of stocks generate lots of market demand, leading to over-subscription, while others lack investors' interest and do not trade at a premium in the after-market.

To prevent an immediate drop in the price of weak securities, during and after the distribution period, the SEC permits stabilization to occur. Stabilization allows the managing underwriter of a security to enter a bid at or below the market rate of that security. This is the only form of market manipulation permitted by the SEC. However, this research will show that the stabilization bid clause has facilitated organized crime in their quest for wealth through stock manipulations.

Appendix 5

SECURITIES AND EXCHANGE ACT OF 1934

This law created the Securities and Exchange Commission and charged it with the responsibility to regulate the securities industry. The law outlawed abusive practices in the issuance of securities, and required registration of stock exchanges, brokers and dealers, and registration of exchange-listed securities. It also required disclosure of certain financial information and insider trading activities. The law gave the SEC surveillance authority over exchanges and brokers, and the authority to regulate margin requirements.

The law also authorized the SEC to enforce the Securities Act of 1933.

In 1938, the law was amended to allow over-the-counter markets to be self-regulated.

The Securities Act of 1934 address issues related to the trading of securities once they have been issued. One of the issues that are strictly addressed by the 1934 Act is the manipulation of stocks. Manipulation involves the purchase and sale of securities with the intend to unfairly influence its market price. Common forms of manipulation are conducted through dissemination of rumors, tips, and the distribution of prospectus and letters with factual misrepresentations or omissions. Other forms of manipulation include illegal market devices such as matched orders by two people and pool activities by syndicated groups designed to raise or depress the price of a particular stock.

Manipulation for the purpose of stabilization is the only acceptable form of manipulation. If an investor suffers damages due to manipulation, the individual may seek a judicial redress within three years of the manipulative activity and within one year of discovery.

Short tendering of Securities: Rule 10b-4 of the 1934 Act also prohibits the use of a borrowed stock to respond to a tender offer. This practice is called short tendering.

A tender is an offer to buy the stock of a firm, at a price usually above the going rate of the company's shares. The goal of a tender offer is to take over control of a "target" company. The sale of a security that is not owned by the seller, otherwise known as 'short sales' is also regulated by the 1934 Act. Investors usually short-sells a stock in anticipation of a price decline.

The short-sale rule is designed to prevent the artificial depression of the price of a stock. Under this rule, short-sales are required to be conducted on a "plus tick or zero-plus tick."

A plus tick is a transaction at a price that is higher than the previous price. A zero-plus tick is a transaction at the same price as the previous transaction, but higher than the last sale that was different.

Insiders: An insider, as per the securities Exchange Act of 1934 is an individual who owns 10% or more of the stock of a corporation, a director or officer of said corporation. Individuals who become insiders are required to notify SEC within 10 days of becoming insiders, and no later than the tenth day of the month following the change. Some of the rules governing insiders include prohibition against making "Short-Swing profits" in the stock of corporation in which they are insiders. A Corporation is at liberty to sue for damages and recovery of profit if an insider unloads a stock, which was held for six months or longer and then repurchases the stock within six months of the sale.

Anyone who has access to inside information, such as clerical staff, lawyers and auditors are also prohibited under the 1934 Act from using information for personal gain. Before anyone with access to a firm's non-public information, the information must first have to have been disseminated to the public through the news media.

Appendix 6

VIOLATIONS AND PENALTIES

The SEC is authorized to commence legal action against persons who have violated any provisions of the securities law, including the reporting requirements. Violations of the Securities Act of 1934 or SEC rules and regulation could result in a fine or imprisonment following conviction.

The maximum fine that the SEC could impose on any individual is $1,000,000 or imprisonment for 10 years or both. If the violator can prove that he was unaware of the rule or regulation that was violated, then only a fine and not imprisonment can be imposed as penalty. For a corporation, the maximum fine that can be imposed is $2,500,000 (two million, five hundred thousand).

Appendix 7

REGULATION T

Regulation T of the Securities Act of 1934 empowered the Federal Reserve Board, an independent federal agency that regulates the amount of money and credit rates in the U.S. economy, to establish margin requirements for broker-dealers. The current margin requirement under Regulation T is 50 %. Which means that investors must deposit 50% of the total market value of their securities with brokerage firm. Brokerage firms may lend the customer the remaining 50% needed to complete the purchase. However, under Regulation T, the brokerage firms are under no obligation to maintain a margin account. Stocks that are bought on margin are referred to as marginal securities.

Marginal securities could be traded on an organized exchange or on the NASDAQ and they include over-the-counter stocks that are approved to be sold on margin by the Federal Reserve Board.

Another provision under Regulation T also gave the Federal Reserve Board the power to set dates when customers must make payments on margin accounts.

Currently, customers purchasing securities in a cash or margin account must pay for the securities within two business days from the date the trade was settled. If the customer fails to make payment within the time period stipulated under the law, the customer's account would be frozen for a period of 90 days. No credit is extended to a customer during the frozen period. In some cases, customers may request an extension on the fifth business day following the trade. This request is made directly to the NASD for over-the-counter securities or to the NYSE for securities listed on the New York Stock Exchange. But this is rarely done, and approval for such request is usually not guaranteed.

Appendix 8

THE NEW YORK STOCK EXCHANGE (NYSE)

The New York Stock Exchange (NYSE) traces its origin to a founding agreement in 1792. On May 17, 1792, twenty-four Wall Street stockbrokers agreed, in writing under a Buttonwood tree at 68 Wall St to conduct stock transactions only with each other. Prior to 1792, stockbrokers, merchants and auctioneers bought and sold securities in offices, coffee shops and at other locations on and around Wall Street.

In 1790, there were only two types of securities that were traded by the brokers. These securities were the revolutionary war bonds, which the American government sold to satisfy the war debt, and shares of stocks in the Bank of the United States.

Since there were no set location and time for the trading of these two securities, stock traders had to search for each other in market places and at other locations around the city.

It wasn't until 1817, that the brokers formalized their organization's name as the New York Stock and Exchange Board.
The name was later shortened to the New York Stock Exchange in 1863. In the same year, a president was appointed and formal rules for conducting business were adopted.

By 1817, the New York Stock and Exchange Board was already listing thirty stocks on each trading day. Trading at that time was conducted under the auspices of the President of the Board who would call out the names of all thirty stocks, one by one. Following each call, the brokers would tender bids to buy a stock or offers to sell the stock in an open auction, by shouting their bid on shares assigned to them. This was the origin of the term "seat" which signifies membership on the Exchange.

A membership seat cost $25 in 1817 and was strictly limited. But on August 23, 1999, the New York Stock Exchange sold a seat on the exchange for $2.65 million; the highest price ever paid for a seat. Only firms that have a seat on the exchange can buy and sell securities on the trading floor. In the years following the American Civil War, fast-paced growth in the railroad industry and in the banking sector, and new inventions such as the telephone and the stock ticker increased trading and opened Wall Street to investors across the country.

In the late 1860's, a boom in the steel industry led to the creation of new corporations to facilitate supply of materials for railroads, machines, bridges, and buildings.

These new corporations and industries turned to the stock market to raise capital, and these activities led to increased trading on the New York Stock Exchange. In an effort to accommodate the added securities of the new corporations, the NYSE expanded its hours, and in 1872 abandoned the call system, and began continuous trading in all stocks throughout the day.

But the biggest changes in the stock market came shortly after the crash of 1929. The months following the crash were economically turbulent, and for the first time, the general public took a keen interest in the securities market. Many companies went bankrupt, while others simply went out of business due to lack of capital.

These economic uncertainties led the United States Congress to intervene in the Securities Market by enacting two new pieces of legislation, the Securities Act of 1933 and the Securities Act of 1934. In compliance with the registration provisions of the Securities and Exchange Act of 1934, the NYSE registered as a national securities exchange with the U.S. Securities and Exchange Commission on October 1, 1934. Prior to 1938, the Exchange governing committee was the primary governing body.

In 1938, the Exchange hired its first paid president and created a thirty-three member Board of Governors. The Board included Exchange members, non-member partners from New York-based, as well as out-of-state firms, and public representatives. In 1971, the Exchange was incorporated as a not-for-profit organization.

In 1972, the members voted to replace the Board of Governors with a 25 member Board of Directors, comprised of a Chairman and Chief Executive Officer, 12 representatives of the public, and 12 representatives from the securities industry.

Today, the NYSE has approximately 3,100 listed companies, whose combined 280 billion shares available for trading are worth more than $12 trillion in total global market capitalization, which is more than four times that of any other equities market in the world.

Appendix 9

NYSE LISTING REQUIREMENTS

The following conditions must be met in order for a stock to be listed on the New York Stock Exchange:

1. The Company must have at least 1,100,000 of its shares publicly held with a total market value of not less than $18,000,000.
2. A minimum of 2,000 shareholders with 100 shares or more or a total of 2,200 shareholders.
3. An average trading volume of no less than 100,000 shares every month, for the proceeding six months leading up to the listing application.
4. A minimum pre-tax earnings of $2.5 million for the latest fiscal year.
5. Written agreement by the company to solicit proxies.

It should be noted that solicitation of Proxies is not required under the Securities Exchange Act of 1934. But it is a requirement that has to be fulfilled before a stock can be listed on the NYSE. Even a listed company that discontinues solicitation or fails to solicit proxies faces the danger of having it stocks delisted.

The NYSE does not unnecessarily delist a company that is otherwise eligible. However, it will give special considerations to request for voluntary delisting.

Under normal circumstances, the exchange will approve voluntary delisting if 67% of the outstanding shares are voted to delist, and no more than 10% of the shareholders object. A company that is delisted for falling below the listing criteria has the option to transfer its listing to any of the other six exchanges with less stringent listing requirements.

Appendix 10

MEMBERSHIP OF THE NYSE

Presently there are 1,366 seats on the New York Stock Exchange. A member is an individual who owns a seat on the exchange. A member or a member firm employs officers who transact business on the floor of the exchange. Since only members of the Exchange may conduct stock transaction on the Exchange floor, each security listed on the Exchange is assigned a trading post where the stock is traded. Any member wishing to purchase or sell a stock must do so at a trading post.

Appendix 11

OTHER CATEGORIES OF NYSE MEMBERS

The following categories of authorized members are employed by member firms or individuals that have a seat on the Exchange.

1. Commission House Brokers: These categories of brokers, sometimes referred to as floor brokers execute orders for clients of their firm, and for their firm's account.
2. Two-Dollar Brokers execute orders for commission house brokers when they are too busy to execute all the orders received from their firms. Two-dollar brokers execute order for any firm, in any security, for a commission.
3. Registered Traders: They execute orders primarily for their own accounts at their own risk.

They also execute orders in some rare cases for client's, but if a client's order is accepted then priority must be given to the client's order over their own account. The fourth group of people authorized to trade on the Exchange is the Specialists.

4. Specialists maintain a fair and orderly market in specific securities. They may act as a principal when trading in their own accounts or as an agent when executing orders for commission house brokers.

Every Stock that is traded on the floor of the NYSE is assigned to a specialist, who is authorized to handle transactions involving more than one stocks traded at the same post. Specialists acting as principals maintain marketability and prevent temporary imbalances in the trading of a stock. They do so by purchasing stocks when there are no bidders and sell when there are no sellers at the trading post. Yet they are prohibited from competing with public orders, but could bid higher or tender a lower offer to reduce a stock's "bid-ask" spread.

Specialists are also authorized to "stop stock" for a publicly traded stock. "Stop stock" occurs when the specialist guarantees that an order placed by a floor broker will be executed at a specified price, unless a better price can be obtained. The implication of a stop order when invoked is that if the specialist stops an order to buy at $50.00, it means the floor broker will not pay more that $50.00 for the order when the transaction is finally executed.

When transacting business in securities, a securities firm may act in one of two capacities, principal or agent. Since most securities firms act in both capacities, they are commonly referred to as broker-dealers. The principal is a dealer who buys and sells stocks for his or her own account at his or her own risk.

When a customer buys stock from a brokerage firm acting as a dealer, the investor receives securities from the firm's own inventory. The firm earns profit by raising the price of the security above the market price.

The term agent is synonymous with the term broker. An agent purchases or sells securities for a customer and charges a commission. When a firm acts as an agent, it usually does not own the securities.

Appendix 12

PLACING AN ORDER

A stockbroker must fill out an order ticket once a customer places an order with the broker. The order ticket should contain the following information:

A. Whether the trade will occur as a sale or a buy order. If the transaction occurred as a sale order, then the location of the securities must be noted on the order ticket, with instruction on whether the stock should be "sell long" or "sell short".

B. Place of execution

C. The Client's account number and type of account.

D. Type of order and order qualifiers, if any.

E. Description of the stock and the quantity sold

F. Identifier of the account executive.

G. If discretion was used in the sale.

H. Whether the sale was solicited or unsolicited

I. Whether the firm acted in a principal capacity or in an agent capacity.

Appendix 13

TYPES OF ORDERS

There are eight different types of orders available to investors who trade on an organized exchange such as the New York Stock Exchange.

The type of order used during a transaction is determined by the objective of the individual investor. The different types of orders are:

1. Market Order
2. Limit Order
3. Stop Order
4. Sell Stop Order
5. Buy Stop Order
6. Stop-Limit Order
7. Sell Stop-Limit Order
8. Buy Stop-Limit

A market order authorizes a broker or stock dealer to execute a transaction on behalf of the client. The order does not specify a price at which the order should be executed. A market order will be executed at whatever price available or at the going rate when the security reached the floor of the exchange. In market orders, customers are unaware of what the execution price will be.

Limit orders are given when a customer wishes to purchase or sell securities at a specific or predetermined price. A broker can only execute a limit order at the specified price or at a price better than the specified price. A buy limit order could be executed at the limit price or at a price below the limit price and a sell limit order could be executed by a broker at the limit price or at a price higher than the sell limit price. Since limit orders are entered from a location away from the trading floor, commission house brokers are usually unable to execute limit orders upon transmission.

For this reason, limit orders are usually given to the specialists to hold until the order can be executed. Unlike market orders, limit orders are sometimes not executed because the limit price was not reached or there were other orders at the same price with a higher priority or "stock ahead" offered at the same time.

Stop orders are market orders to buy or sell securities once a specified price is reached. The specific price indicated by the investor is referred to as the stop price. Once stop orders are activated, the investor is guaranteed execution, without a commitment as to the execution price.

Sell stop order: Sell-stop orders are usually tendered below the current market price of the stock. Sell-stop orders are used by investors who want to limit their loss or protect a profit on a long stock position. For example: investor purchases 200 shares of "Company X" stock at $50 per share. After assessing his or her loss tolerance level, the investor decided to limit any losses to 5 points and enters a sell stop order at 40. Once the trading price of that stock reaches $40 or higher, the sell stop order is triggered and it becomes a market order to sell 200 shares of "Company X." By the application of a sell stop order at $40, the investor limits his or her loss on that stock to $2,000.

On the other hand, if the price of "Company X" stock were appreciating (Bull Market) instead of declining (Bear Market) and the price went up to $70. The investor can decide to protect his or her profit by entering a sell-stop order at $65, five dollars below the prevailing rate. If the security trades at $65 or higher, the order is triggered and the investor retains a portion of the appreciation.

Buy Stop Order: Buy-stop orders are used to limit a loss or protect a profit on a short sale, and are usually placed above the current market price.

An investor who sells short 200 shares of "Company X" stock at $80 could protect his or her position against a rise in the price of "Company X" by placing a buy stop order at $90. If "Company X" stock trades at $90 or above, the investors order is activated, enabling him or her to buy 200 shares at the market.

Stop-Limit Order: A stop-limit order is similar to a stop order in that a stop price will activate the order. But stop-limit orders, once activated become a buy limit or sell limit order and they can only be executed at a specified price or better. A stop-limit order is therefore a combination of both the stop order and the limit order. A stop-limit order eliminated the risk of an investor not being guaranteed an execution price as is the case with stop orders, but investors exercising stop limit orders may risk missing the market in that stock altogether.

Sell Stop-Limit Order: Sell-stop-limit orders are used to limit a loss or protect a profit on a long position. Sell stop-limit orders are always placed below the current market price of the stock and once activated, a sell stop-limit order becomes a sell limit order.

Buy Stop-Limit Order: Buy-stop-limit orders are used to limit a loss or protect a profit on a short position and are usually placed above the prevailing ask-bid of the security. Buy stop-limit orders become a buy limit order once activated. As an illustration, an investor sells short 2000 shares of "Company X" at $20 per share and places a buy stop-limit order at 28. If the stock trades at $28 or more, the buy-stop limit order becomes a buy limit order at $28.

There will be no execution once an investor exercises a buy-stop-limit order unless the order can be filled at the stipulated price, which in this case is $28 or less.

On Tuesday, November 21, 2000, I had extensive interviews with a specialist for Fleet Securities on the floors of the New York Stock Exchange, and later that day with Mr. Murray Teitelbaum, the Director of Educational Services at the New York Stock Exchange in his office at 18 Broad Street, just one level above the exchange floor.

During the interviews, it was disclosed that in addition to a variety of trade orders entered by investors, broker-dealers and specialists use eight different qualifiers in listing available stocks before securities transactions can be executed.

The order qualifiers are:

1. Day Order
2. Good Till Cancelled or Open Order
3. At The Opening
4. At the Close
5. Not Held
6. All or None
7. Immediate or Cancel
8. Fill or Kill

Day Order: All orders are good only on the day in which it was offered, and would be cancelled at the end of the day if not executed, unless indicated otherwise.

Good Till Cancelled or Open Order: This is an order that is periodically updated by floor brokers, and it remains in effect until executed or cancelled.

At The Opening: This qualifier indicates that the security can only be purchased or sold at the opening price. If the transaction is not completed at the opening, the order will be subject to cancellation.

At The Close: This qualifier indicates to the broker that the order should be filled at a price that is close to the closing price, but there is no guarantee upon execution that the price at which the order is executed will be the closing price.

Not Held: This qualifier allows the floor broker the discretion on when to fill the order and the price at which the order should be executed. Stock specialists do not accept "not held" orders and floor brokers are under no obligation to execute "not held" orders.

All or None: If this qualification is attached to an order, the entire order must be filled on the same ticket or not filled at all. The "all or none" order is not a high priority order and can be executed at any time during the course of the trading day.

Immediate or Cancel: This qualifier dictates that a substantial portion, if not all of the order must be executed immediately. The portion of the order that is not immediately executed is subject to cancellation.

Fill or Kill: This qualifier when applied mandates that the broker must immediately execute the order or the entire order will be cancelled. This qualifier is a combination of the all or none and immediate or cancel qualifications.

Appendix 14

PRIORITY OF ORDERS

All stock transactions take place at a designated trading post, on the floor of an organized exchange.

Since various traders sometimes forward their orders to the same trading post simultaneously, transactions are prioritized for purposes of execution. The highest priority for transaction is giving to price.

The highest and lowest bidders have first priority over filling stock orders. If all the bidders tender the same price, then time becomes the determining factor. The trade will then be giving to the trader who was first in the trading crowd.

The least priority in securities transactions is giving the size of the order. The size of the order becomes the determining factor. If the orders are equal in price and time, stockbrokers with the largest order will normally have preference over other traders who are similarly situated, but only if there is no variation in the price of the offer and the time that the offer was tendered.

In addition to the various orders and order qualifiers that govern stock brokers and dealers activities in day to day transactions, adherence to two critical procedures is also required in the execution of trades on an organized exchange. The two procedures are trade comparison and special block procedures.

Trade Comparison Procedure requires that securities dealers send a confirmation to each other on the first business day following the date that the transaction was executed. If upon receipt of a comparison notice, a dealer discovers an omission, a discrepancy or absence of matching transactions, he or she would be obligated to send a "Don't Know" notice to the other dealer, informing that dealer of such facts.

"Don't know" notices are crucial for trade comparison and reconciliation. In some cases, the challenge is not trade reconciliation, but a threat to the fair and orderly condition of the market.

This occurs when the size of an order is larger than the usual volume, making the use of the regular auction market procedure impossible. In those instances, the use of a "Special Block Procedure" which, requires prior authorization from an official on the trading floor becomes imperative in order to maintain the orderly condition of the market.

Appendix 15

PROCESSING A TRANSACTION

Upon completion of an order ticket, transactions are executed through the collaborative efforts of four operations departments within a brokerage firm. These departments are:

1. Order Department otherwise known as the Wire Room.
2. Purchase and Sales Department.
3. Margin Department.
4. Cashiering Department.

The Order department transmits purchase and sells orders by allocating orders to a specific exchange or product area designated by the broker who filled out the order ticket. The purchase and sale department examines the details of the trade with the broker-dealer on the other side of the trade who is known as the contra-broker for the purpose of reconciling any trade discrepancies before recording the transaction.

The margin department keeps a record of active accounts for each of the firm's clients and post all trade activities relative to those accounts.

The margin department also enforces customer account rules with regard to payment and delivery. The cashiering department receives and disburses funds and securities for the firm.

Other critical departments within a brokerage firm, but which are not directly involved in immediate trade executions are the reorganization, stock record, and proxy departments. The reorganization department processes the exchange of one security due to mergers, tender offers and the exercise of rights and warrants for another security. The stock records department monitors the movement of all securities within a brokerage firm by identifying and maintaining a detailed information on the owners and location of all the stocks held in their portfolio. The proxy department forwards proxy statements and authorization forms or proxies to shareholders.

The overview of the stock market that we have had thus far primarily concern transactions in securities that are listed on an organized exchange. These exchanges include the New York Stock Exchange, The American Stock Exchange and the five regional exchanges in Boston, Cincinnati, Chicago, Pacific and Philadelphia, and not third markets such as the National Association of Securities Dealers.

Appendix 16

THE NATIONAL ASSOCIATION OF SECURITIES DEALERS (NASD)

In 1938, the U.S. Congress enacted a piece of legislation that was aimed at reducing manipulative schemes and unfair practices by traders in an effort to sustain continued public confidence in the securities market.

But instead of expanding the role of the Securities and Exchange Commission which was created four years earlier to police the securities industry, congress felt that the function of controlling ethical practices of traders should be exercised by means of industry self-regulation.

The legislation, which became known as the Maloney Act, thus amended the SEC Act of 1934, which originally vested the power to set ethical practices in the Securities and Exchange Commission.

One year after the Maloney Act was enacted; a National Securities Association made a request for registration as a self-regulatory organization (SRO) to the SEC. The request was approved, and the National Association of Securities Dealers (NASD) was created as a self-regulatory organization.

The NASD is a stock market that uses computers and telecommunications for the trading of thousands of securities. The activities of NASD are governed by a Board of Governors, with administrative districts throughout the country. Each district, which is headed by a District Committee serves as an agent of the Board of Governors in administering and directing the affairs and in advancing the purposes of NASD.

Now let's turn our attention to the NASD's over-the-counter" (OTC) market which is referred to as the "third" market within the securities industry. The OTC market is a negotiated market with no centralized meeting place. Trading in the over-the-counter market is conducted by telephone, and through a computer network connecting traders, instead of face-to-face transactions that are synonymous with trading on an organized exchange.

This distinction is important because as we would find out later in chapter four, most of the securities fraud cases in the United States involve stocks traded in the over-the-counter market.

The OTC market is regulated by the National Association of Securities Dealers (NASD).

Unlike trading on an organized exchange, transactions in over-the-counter market are initiated when a customer places an order. The broker then completes an order ticket, which is routed to an OTC trader for execution. The OTC trader must then locate a dealer known as "market makers" with whom to negotiate the terms of trade before the transaction can be executed.

The OTC market allows for more that one market maker per security otherwise called specialist in an organized exchange. Market markers in the OTC market conduct transactions for their own profit, and at their risk, and they must stand ready to purchase or sell a minimum number of offers at its quoted price.

However, the minimum trading requirement is dependent on the type of security and the OTC system in which the dealer displays its quotes. Quotations in OTC markets displayed on the National Association of Securities Dealers Automated Quotation System (NASDAQ) which is an electronic communication method that provides quotes on certain over-the-counter securities.

The Nasdaq is built on a unique system of competing market maker firms that list specific prices for the sale and purchase of securities. It is unique in its use of flexible computer-screen trading system that enables people to trade by computer from wherever they are located.

Member firms of the NASD who are subscribers to the NASDAQ system have terminals that allow them to tender bids and make offers for over-the-counter stocks.

The NASDAQ system has three levels, each of which is used for different purposes. The NASDAQ system Level 1 screen allows traders access to the highest bid and the lowest offer for stocks in which there are two or more dealers.

Level 1 is generally used by branch offices of firms that are members of the National Association of Securities Dealers. The Level 2 screen enables dealers of member firms to enter bids, offers and quotation sizes for each security to be traded. Level 3 provides dealers with the ability to enter bids and offers for the stocks for which they have authorization to enter quotes.

Appendix 17

NASDAQ TRADING REQUIREMENTS

The requirements for trading securities on the NASDAQ are not as stringent as those of the New York Stock Exchange. Nasdaq is a competing dealer market, different from an auction market in that many dealers, called market makers, use their own capital, research, retail, and systems resources to represent a stock. Many market makers can represent the same stock; thus, they compete with each other to buy and sell that stock.

Auction markets like the New York Stock Exchange and AMEX have only one person, a specialist, who in a centralized location or "floor," matches incoming orders to buy and sell each stock. Specialists are not allowed to provide research or retail sales support, and are limited to only one firm's available capital. The average Nasdaq stock has eleven market making firms that risk and invest their capital.

However, specific criteria also have to be met before a security can be traded on the Nasdaq, and before a broker or dealer is accorded membership with the NASD. For a security to be listed, there must be at least three dealers for the initial listing. The dealers are required to make bids and offers, and to conduct transaction involving 100 units of shares at the quoted bid or offer on the trading days.

These transactions must be reported to the NASD within 90 seconds after the trade in that security has been completed. A broker must pass the licensing examination, and must be authorized in the United States to transact investment or securities business for the account of others. The NASD rule also require that dealers pass a qualifying examination and be authorized before they can conduct securities transactions for their own accounts as part of a regular business.

Brokers or dealers who have been suspended or expelled from any registered securities exchange or association for any misconduct, including those barred from engaging in the securities business subsequent to a court order are ineligible for membership.

Appendix 18

NASD MARKET FACILITATORS

There are a number of systems and services available to NASD members, all of which are instrumental for day to day transactions in over-the-counter stocks. These systems are:

1. Nasdaq National Market System (NNM)
2. The Consolidated Quotation Service (CQS)
3. The Small Order Execution System (SOES)

The Nasdaq National Market gives NASD traders access to more issues, more volume and more market makers by providing detailed information about all over-the-counter stocks available to traders.

The Consolidated Quotation Services (CQS) also known as the consolidated tape is an electronic service that provides securities traders with information on offers and tenders in securities that are listed on the NYSE, The AMEX and on regional exchanges. Also reported on the consolidated tape system are transactions conducted in over-the-counter or third markets, such as the Nasdaq. Common stocks, preferred stocks and warrants are some of the securities quoted through the consolidated quotation service. NASD market makers are authorized to enter quotes and trade volumes into the consolidated quotation service.

The Small Order Execution System (SOES) enables traders to make entries and to execute orders through computer networks. All securities listed on the Nasdaq are authorized for trading through the small order execution system. It is worth noting that most over-the-counter securities are ineligible for trading on the Nasdaq system.

Information on these ineligible securities can be found in a weekly publication which industry experts refer to as the pink sheets. The pink sheets, which derived its name from the color of the paper on which it is printed, contain an alphabetical list of securities in which there is no significant national interest.

Appendix 19

RULES AND REGULATIONS GOVERNING NASD MEMBER FIRMS

There are four major categories of rules and regulations, which govern both the conducts of NASD's members and member firms and the ways in which violations or disputes are handled or resolved.

The four major categories are:

1. The Uniform Practice Code
2. The Conduct Rule
3. The Code of Procedure
4. The Code of Arbitration

The Uniform Practice Code addresses how transactions should be conducted by member firms when settling contracts. These rules are binding on all NASD members and are applicable to all transactions, except transactions in U.S. government and municipal securities, which are exempted by the Securities Exchange Act of 1934.

The Conduct Rules govern how NASD members firms should deal with their clients. The objectives of the conduct rules are to promote fair trading practices by preventing fraudulent, manipulative activities, and unreasonable profits, commissions and charges by members. As we shall see in the next chapter, these goals are not always met.

The NASD Code of Arbitration requires that disputes between members, and those involving members and their clients be resolved through arbitration. Disputes between members and a public customer cannot be arbitrated without a prior written consent from the public customer. The National Arbitration Committee appoints a three-member panel to settle disputes when they arise.

A simplified arbitration procedure, which requires that only one arbitrator can be used for disputes involving amounts that are $10,000 or less. The arbitrators' decisions are final, unless otherwise specified by the state or federal law.

The Code of Procedure spells out NASD disciplinary process. If the Association's Enforcement Division deems that a member has violated any its rule or a federal or state securities law, the Division will issue a complaint. The respondent is required to answer the complaint within 25 days, following the receipt of the complaint.

Failure to answer the complaint within 25 days will trigger a second notice, and failure to answer the second notice within 14 days can be deemed as an admission of guilt. Respondents are entitled to a hearing before a three-member panel, each of who are appointed by the association's Chief Hearing Officer.

There are several penalties that can be imposed by the hearing panel upon disposition of a complaint. Some of the penalties available to the panel are censorship, fine, suspension of membership or registration, definitely or indefinitely as well as expulsion or revocation of membership. The respondent will sign a letter of acceptance, consent or a waiver if the panel findings are not disputed. If unsatisfied with the panel decision, the respondent has 25 days to appeal the decision to the NASD National Adjudicatory Council (NAC).

The National Adjudicatory Council is a committee of NASD Regulation, composed of member firms and the public, that is authorized to review disciplinary membership, and exemptive proceedings, as well as applications for relief from statutory disqualification.

The NASD Enforcement Department can also appeal to NAC if the panel rules in favor of the respondent. NAC is empowered to modify or alter the decision of the hearing panel. A respondent who is unsatisfied with the NAC decision can file an appeal with the Securities and Exchange Commission. Dissatisfaction with the decision of the SEC could put the case before a federal court, which has the final say in the disciplinary process.

Appendix 20

PENNY STOCK

A penny stock is a low-priced over-the-counter stock often quoted in pink sheets

and in the NASD's over-the-counter bulletin board.

Over-the-counter securities are penny stocks except.

1. A listed stock
2. Nasdaq Securities
3. An investment company securities
4. Over-The-Counter listed puts and calls
5. Securities with market value of $5 per share or more and in continuous operation for three or more years with tangible assets exceeding $2,000,000.
6. Securities with market value of $5 per share or more with tangible assets exceeding $5,000,000 if in continuous operation for less than three years.
7. Securities with a market value of at least $5 per share with average revenue of $6,000,000 or more for the last three years.

Appendix 21

PENNY STOCK RULES AND REGULATIONS

Rules 15-1 through 159-6 of the securities and Exchange Commission requires that broker-dealers provide a risk disclosure document to customers before a broker-dealer can execute any penny stock transaction on behalf of a client. The disclosure must contain language specified by the SEC, the risk associated with penny stock investments and the current quotation for the stock.

These sections of the SEC rules also require that broker-dealers and representatives disclose the amount of commission that will be charged to the customer for the transaction. Broker-dealers who have sold a penny stock security to a client by the last trading day of any month are also required to forward monthly statements every month until the security is no longer held for customer.

The monthly statement must identify each penny stock and state the number of shares and the estimated market value of the securities held for the customer's account.

SEC Rule 159-9 also known as the "Cold Call Rule" places specific conditions on broker-dealers before they can execute penny stock transactions in customers accounts. The rule requires that a written consent, which indicates the amount and identity of the penny stock that will be purchased on the customer's behalf must be received from the client prior to any penny stock transaction by the broker-dealer in a customer's account.

Three conditions must be met before an account is approved for penny stock transactions. These conditions are as follows:

1. The broker-dealer must examine the client's suitability for penny stock transactions, taking into account, the client's financial status and the client's investment goals.

2. The broker-dealer must deliver a written statement regarding the suitability determination to the client for the client's review.

3. A signed and dated copy of the written statement, acknowledging receipt must be received from the client before penny stock transactions can be effected in a client's account.

It should be noted that the Securities and Exchange Act of 1934 exempt certain transactions from the cold call rule. The exempted categories are transactions by broker-dealers whose total commission from penny stock is 5% or less. Transactions with established customers through private placements are also exempted. Transactions involving institutionally accredited investors, issues officers, directors, general partners, 5% owners and those not recommended by broker-dealers are also exempted from rule 159-9.

Appendix 22

OTHER SEC RULES AND REGULATIONS RELEVANT TO THIS STUDY

Rule 10b-2:1 Securities and Exchange Commission rule that prohibits covering a short position in a security with stock purchased out of a new offering of the security, if the short position was established between the filing of the registration statement and the beginning of the distribution of the offering.

Rule 10b-6: Securities and Exchange Commission rule that prohibits persons engaged in a distribution of securities from bidding for or purchasing those or similar securities until they have given equal access to all interested parties, and have completed their participation in the distribution of that security.

Rule 10b-6: A Securities and Exchange Commission rule that permits broker/dealers engaged in the distribution of a security to conduct "passive" market transactions in the security being distributed without being in violation of the provisions of SEC Rule 10b-6.

Rule 13d: The Securities and Exchange Commission rule requiring disclosures by anyone acquiring a beneficial ownership of 5 percent or more in any equity security registered with the SEC.

Rule 15c3-1: Securities and Exchange Commission rule that requires broker/dealers to maintain sufficient assets to satisfy its net capital requirement.

Rule 15c3-3: Securities and Exchange Commission rule that ensures that the broker/dealer has possession or control of customers' securities, and properly segregates these securities from securities the firm owns. The rule also requires that the broker/dealer deposits customers' funds in a Special Reserve Bank Account.

Rule 17a-3: Securities and Exchange Commission rule that specifies the books and records related to the securities business that brokers and dealers have to make and keep current.

Rule 17a-4: Securities and Exchange Commission rule that specifies the time period that broker/dealers must preserve Rule 17a-3 records and other documents pertaining to the business.

Rule 19b-4: Securities and Exchange Commission rule that provides procedures that self-regulatory organizations follow to propose rule changes to the SEC.

Appendix 23

MARGIN ACCOUNTS

There are various types of accounts that a brokerage or securities firm and their registered representatives can open and maintain for a customer. These accounts could range from a joint account, corporate account, partnership account, fiduciary account, minor's custodian account, discretionary account, investment advisor account, numbered or coded account, options account and accounts requiring employer approval. But for the purposes of this dissertation, we are going to focus on margin account, since most of the fraudulent cases examined in this project involved margin accounts.

Customers who invest in the stock market have the option to pay for their securities in full or they could borrow a part of the purchase price from their broker-dealer. The amount that the investor is required to deposit with the broker-dealer is known as the margin. The option to purchase securities on margin enables the investor to increase his or her return without increasing investment capital. But this privilege has also been the source of several of the schemes that will be discussed in chapters four and five.

The Federal Reserve Board, under Regulation T of the securities and Exchange Act of 1934 regulates the authority of brokerage firms to extend credit to an investor. The Federal Reserve Board requires that 50% of the total cost of the purchased securities must be deposited with the broker-dealer within two business days. These deposits could be in the form of cash equal to the amount of margin or in the form of fully paid securities.

Customers who conduct margin transactions in stocks will receive a loan, otherwise referred to as "Regulation T Call." If securities are tendered as the means of payment for the margin instead of cash, then the investor must tender a security that has a market value equal to twice the amount of the loan. In other words, if an investor purchases 200 shares of "Company X" at $80. The investor will receive a Regulation T Call for $8,000. The investor may choose to deposit $8,000 in cash or fully paid securities with a market value of $16,000.

Before opening a margin account, investors are required to sign a contract with the broker-dealer, promising to fulfill the following three conditions:

The investor must agree to pledge the purchased stocks to the broker-dealer as collateral for the loan on the margin account.

The investor must give the broker-dealer permission to pledge the purchased securities at a bank as collateral for a bank loan.

The investor must grant the broker-dealer the authority to loan the security to another investor.

Brokerage firms and their representatives refer to the first condition as the credit agreement. The second condition is termed the hypothecation agreement, while the third condition is known as the loan consent agreement. Brokerage firms can pledge an amount equal to 140% of their clients debit balance to secure a bank loan.

When that happens, the brokerage firm will receive a broker rate "Call Loan Rate" from the bank, but usually charges the client an additional percentage, and in some cases, "loan sharking" rate above the rate that was given by the bank.

Margin interest is charged to a customer's account on a daily basis and is posted to the customer's account every month. Securities that could be purchased on a margin include those listed on a registered exchange, the Nasdaq National Market as well as over-the-counter stocks that have been approved by the Federal Reserve Board. Trading in margin accounts are particularly attractive to organised crime controlled brokerage firms because it gives their victims a false sense of increased returns on their investment.

APPENDIX 24

SPSS CODEBOOK GENERATED FROM DATA SET

SYSFILE INFO:

File Type: SPSS Data File
Creation Date:
Creation Time:

Label: Not Available

N of Cases: 0

Total # of Defined Variable Elements: 63
# of Named Variables: 47

Data Are Not Weighted

Data Are Uncompressed

File Contains Case Data

Variable Information:

Name		Position
CASENUM	case number	1

Measurement level: Ordinal
Format: F4 Column Width: 5 Alignment: Right

LNAME last name 2
Measurement level: Nominal
Format: A19 Column Width: 19 Alignment: Left

FNAME first name 5
Measurement level: Nominal
Format: A11 Column Width: 11 Alignment: Left

NYSID nysid number 7
Measurement level: Nominal
Format: A15 Column Width: 15 Alignment: Left

FBI fbi number 9
Measurement level: Nominal
Format: A15 Column Width: 15 Alignment: Left

DOB date of birth 11
Measurement level: Nominal
Format: F10 Column Width: 12 Alignment: Left

SEX gender of accused 12
Measurement level: Nominal
Format: F8 Column Width: 10 Alignment: Left
Missing Values: 9

Value	Label
1	male
2	female

ARRDAT date of arrest 13
Measurement level: Nominal
Format: F10 Column Width: 12 Alignment: Left

DOCKET docket number 14
Measurement level: Nominal
Format: A23 Column Width: 23 Alignment: Left

COURT trial court 17
Measurement level: Nominal
Format: F8 Column Width: 29 Alignment: Left

Value Label

1 new york state supreme court, new york county
2 federal district court, southern district of new york
3 federal district court, eastern district of new york
4 federal district court, newark, new jersey
5 new york state supreme court, kings county
6 new york state supreme court, queens county
7 new york state supreme court, bronx county
8 new york supreme court, richmond county
9 new york city criminal court, new york county
10 new york city criminal court, kings county
11 new york city criminal court, queens county
12 new york city criminal court, bronx county
13 new york city criminal court, richmond county
14 nassau county criminal court

TOPCH top charge 18
Measurement level: Nominal
Format: F8 Column Width: 31 Alignment: Left
Value Label

1 murder/ racketeering
2 rape
3 kidnapping
4 arson
5 armed robbery
6 rico racketeering conspiracy
7 narcotics conspiracy
8 felonious assault
9 bank robbery
10 robbery
11 enterprise corruption
12 burglary
13 possession of controlled substance
14 extortion
15 possession of stolen firearms
16 grand larceny
17 interfere with commerce by threat
18 criminal possession of weapon
19 criminal possession of stolen property
20 possession of burglars tools
21 loan sharking/criminal usury
22 consorting
23 unregistered vehicle dismantler
24 money laundering
25 mail fraud
26 tax evasion/false income tax
27 securities fraud
28 unauthorized access device
29 promoting gambling

30 possession of stolen stocks
31 possession of false stock certificate
32 criminal mischief

OTHCHG1 first other charge 19
Measurement level: Nominal
Format: F8 Column Width: 33 Alignment: Left

Value	Label
1	murder
6	rico-racketeering conspiracy
7	narcotics/drug conspiracy
8	felonious assault
10	robbery
11	enterprise corruption
15	possession of stolen firearms
16	grand larceny
17	interfere with commerce by threat
18	criminal possession of weapon
19	possession of stolen property
20	possession of burglars tools
21	criminal usury/loan sharking
22	consorting
25	mail fraud/possession of stolen mails
26	tax evasion/false income tax
27	stock fraud
29	promote gambling
32	criminal mischief
33	bribery
34	attempted robbery
35	attempted burglary
36	tax fraud/tax evasion/false income tax
37	gambling records
38	obstruct justice
39	FRAUD/SWINDLES
40	unauthorized access device
41	grand larceny of stocks

OTHCGH2 second other charge 20

Measurement level: Nominal

Format: F8 Column Width: 23 Alignment: Left

Value	Label
6	rico-racketeering conspiracy
9	bank robbery
10	robbery
11	enterprise corruption
14	extortion
18	criminal possession of weapon
21	loan sharking/criminal usury
26	tax fraud/income tax evasion
29	promoting gambling
32	criminal mischief
37	possession of gambling records
39	fraud/swindles
41	grand larceny of stocks
42	continuing criminal enterprise

OTHCHG3 third other charge 21

Measurement level: Nominal

Format: F8 Column Width: 30 Alignment: Left

Value	Label
4	arson
8	felonious assault
29	promoting gambling
38	obstruct justice
40	unauthorized access device

OTHGHG4 forth other charge 22

Measurement level: Nominal

Format: F8 Column Width: 18 Alignment: Left

Value	Label
21	loan sharking

OTHCHG5 fifth other charge 23

Measurement level: Nominal

Format: F8 Column Width: 12 Alignment: Left

Value	Label
9	bank robbery

CRIMCODE criminal code 24
Measurement level: Nominal
Format: A50 Column Width: 50 Alignment: Left
CRIMCLAS crime classification 31
Measurement level: Nominal
Format: A32 Column Width: 32 Alignment: Left
PREDETC number of days crime committed before detection 35
Measurement level: Nominal
Format: F8 Column Width: 9 Alignment: Left
PETNR petitioner 36
Measurement level: Nominal
Format: F8 Column Width: 10 Alignment: Left

Value	Label
1	state of new york
2	federal district court, southern district of new york
3	federal district court, eastern district of new york
4	federal district court, newark new jersey

NUMACCD number of accused 37
Measurement level: Scale
Format: F11 Column Width: 8 Alignment: Right
CRIMFAML crime family 38
Measurement level: Nominal
Format: F8 Column Width: 18 Alignment: Left

Value	Label
1	genovese crime family
2	gambino crime family
3	lucchese crime family
4	colombo crime family
5	bonnano crime family
6	unidentified-freelance

AMTFRD amount of fraud 39
Measurement level: Nominal
Format: F8 Column Width: 11 Alignment: Left
DISPTN court disposition 40
Measurement level: Nominal
Format: F8 Column Width: 16 Alignment: Left
Value Label
1 pled guilty
2 jury conviction
3 trial conviction
4 not guilty
SENTDT sentence date 41
Measurement level: Nominal
Format: F10 Column Width: 12 Alignment: Left
PENALTY penalty 42
Measurement level: Nominal
Format: F8 Column Width: 28 Alignment: Left
Value Label
1 consecutive life sentences
2 life sentence
3 minimum term to life sentence
4 5000-6000 months
5 1000-2000 months
6 500-600 months
7 300-350 months
8 200-250 months
9 150-199 months
10 100-149 months
11 75-99 months
12 60-74 months
13 50-59 months
14 40-49 months
15 30-39 months
16 20-29 months
17 10-19 months
18 5-9 months
19 1-5 months
20 fine and prison term
21 fine only
22 restitution
23 probation
24 community service
25 supervised released
26 conditional discharged
27 discharged/not guilty

PENRAT penalty ratio 43
Measurement level: Scale
Format: F8 Column Width: 8 Alignment: Right
ENFR enforcement ratio 44
Measurement level: Scale
Format: F11 Column Width: 8 Alignment: Right
AMTREC amount recovered 45
Measurement level: Nominal
Format: F8 Column Width: 26 Alignment: Left
RICONYS fed rico and new york state penal guideline 46
Measurement level: Nominal
Format: F8 Column Width: 10 Alignment: Left

OFFTYP offense type 47
Measurement level: Scale
Format: F8 Column Width: 8 Alignment: Right
Value Label
1 stock fraud
2 interpersonal crime

PUN punishment units 48
Measurement level: Scale
Format: F8 Column Width: 8 Alignment: Right
PUNREC recoded punishment 49
Measurement level: Scale
Format: F8 Column Width: 8 Alignment: Right
Value Label
1 low
2 medium
3 high
PUNREC1 recoded punishment 50
Measurement level: Scale
Format: F8 Column Width: 8 Alignment: Right
Value Label
1 very low
2 low
3 medium
4 high
5 very high

AMTFRDT recoded fraud amount 51
Measurement level: Scale
Format: F8 Column Width: 8 Alignment: Right
YEARBORN year of birth 52
Measurement level: Scale
Format: F8 Column Width: 8 Alignment: Right
AGE age of accused 53
Measurement level: Scale
Format: F8 Column Width: 8 Alignment: Right
AGER recoded age 54
Measurement level: Scale
Format: F8 Column Width: 8 Alignment: Right
Value Label
1 young
2 middle age
3 old
AGER2 recoded age2 55
Measurement level: Scale
Format: F8.2 Column Width: 8 Alignment: Right
Value Label
1.00 young
2.00 old

AMTFRDR recoded fraud amount 56
Measurement level: Scale
Format: F8.2 Column Width: 8 Alignment: Right
Value Label
1.00 very low
2.00 low
3.00 medium
4.00 high
5.00 very high

ARRST2 * No label * 57
Measurement level: Scale
Format: ADATE10 Column Width: 8 Alignment: Right
SENT2 * No label * 58
Measurement level: Scale
Format: ADATE10 Column Width: 8 Alignment: Right
PROCESS time to disposition 59
Measurement level: Scale
Format: F8 Column Width: 8 Alignment: Right

PROCR recoded process 60
Measurement level: Scale
Format: F8 Column Width: 8 Alignment: Right

Value	Label
1	low
2	medium
3	high

RICOCODE * No label * 61
Measurement level: Scale
Format: F8 Column Width: 8 Alignment: Right
NEWRICO new Rico code 62
Measurement level: Scale
Format: F8 Column Width: 8 Alignment: Right

Value	Label
1	prerico
2	postrico

NEWDETC recoded detection time 63
Measurement level: Scale
Format: F8.2 Column Width: 8 Alignment: Right

Value	Label
1.00	Short Detection Time
2.00	medium Detection Time
3.00	Long detection Time

Appendix 25

GLOSSARY OF TERMS

Agency Order: An order that a broker/dealer executes for the account of a customer with another professional or retail investor and for which a commission is typically charged.

Annual Report (10 K): Public companies are required to file an annual report with the Securities and Exchange Commission detailing the preceding year's financial results and plans for the upcoming year. Its regulatory version is called "Form 10 K." The report contains financial information concerning a company's assets, liabilities, earnings, profits, and other year-end statistics. The annual report is also the most widely read shareholder communication.

Arbitral Immunity: Arbitrators are protected from suits arising out of their quasi-judicial conduct in arbitration proceedings.

Arbitrage: Arbitrage involves the simultaneous purchase of a security in one market and the sale of it or a derivative product in another market to profit from price differentials between the two markets.

Asks Price (offer price): The price at which a Market Maker is willing to sell a security.

Auction Market: The system of trading securities through brokers or agents on an exchange such as the New York Stock Exchange and the American Stock Exchange. In an auction market, buyers and sellers meet and compete for the most advantageous price through a specialist.

Bear: Someone who believes the market will decline.

Bear and Bull Markets: A bear market is one in which prices are low or declining; a bull market is one in which prices are high or rising.

Bear Spread: The simultaneous purchase and sale of two futures contracts in the same or related commodities with the intention of profiting from a decline in prices but at the same time, limiting the potential loss if this expectation is wrong. This can usually be accomplished by selling a nearby delivery and buying a deferred delivery. It is also a delta-negative options position comprised of long and short options of the same type, either calls or puts, designed to be profitable in a declining market. An option with a lower strike price is sold and one with a higher strike price is bought.

Beneficial Owner: A person who benefits from ownership of a security or mutual fund. Shares or title may be held by a bank or broker for safety and convenience "street name" to expedite transactions, but the real owner is the beneficial owner.

Best Ask: The lowest quoted offer of all competing market makers to sell a particular stock at any given time.

Best Bid: The highest quoted bid of all competing marker makers to buy a particular stock at any given time.

Best-Efforts Underwriting: An investment bank, acting as an agent, agrees to do its best to sell an issue to the public, but does not make an outright purchase of the securities.

Best-Execution Requirement: The obligation of market makers, broker/dealers, and others to execute customer orders at the best price available at the time the trade is entered.

Beta: A statistical measure of a stock's volatility compared with the overall market. A beta of less than 1 indicates lower risk than the market; a beta of more than 1 indicates higher risk than the market.

Bid Price (Buy Price): The quoted bid at which a market maker is willing to buy a stock.

Bid/Ask Spread: The difference between the price at which a market maker is willing to buy a security (bid), and the price at which the firm is willing to sell it (ask). The spread narrows or widens according to the supply and demand for the security being traded.

Block Trade: A purchase or sale of a large quantity of stock, generally 10,000 shares or more.

Blue-Chip Stock: Stock in a company with a national reputation for quality, reliability and the ability to operate profitably in good or bad times.

Blue-Sky laws: State laws that require issuers of securities to register their offerings with the state before they can be sold to its residents. Most blue-sky laws include provisions relating to fraudulent activities and the licensing of people selling securities. The term is believed to have originated when a judge ruled that a particular stock had about the same value as a patch of blue sky.

Boiler Room: An enterprise which often is operated out of inexpensive, low-rent quarters that uses high pressure sales tactics, generally over the telephone, and possibly false or misleading information to solicit generally unsophisticated investors.

Bond: A long-term promissory note in which the issuer agrees to pay the owner the amount of the face value on a future date and to pay interest at a specified rate at regular intervals.

Broker: An individual or firm who acts as an intermediary between a buyer and seller, or an agent who handles the public's order to buy and sell securities, commodities or other property, usually charging a commission.

Broker/Dealer: Member firms that act as securities dealers or brokers, or perform both functions.

Bull: One who believes the stock market will rise.

Buttonwood Agreement: A 1792 trade agreement banding the original 24 brokers in New York together into an investment community. The agreement was named for a Buttonwood tree that served as their informal meeting place on Wall Street.

Buy-Side Trader: An individual, such as a pension or mutual fund portfolio manager, who effect trades for an institutional investor.

Call Bonds: The right to redeem outstanding bonds before their scheduled maturity. Options: The right to buy a specific number of shares at a specified price by a fixed date.

Central Computer Complex: The facility in Trumbull, Connecticut, where The Nasdaq Stock Market's mainframe computers are located. The computer complex is linked to more than 3,400 Nasdaq terminals in securities firms and financial institutions. The system processes more than 1 million transactions per day. Nasdaq is also the only stock market in the world with a fully redundant disaster recovery facility, located in Rockville, Maryland.

Chinese Wall: A term used to describe procedures enforced within a securities firm that separate the firm's departments to restrict access to non-public, material information.

Circuit Breaker: A procedure that temporarily halts trading on all U.S. stock markets for one hour when the Dow Jones Industrial Average falls 250 points or more within a trading day. The pause is designed to allow time for the markets to absorb the news that precipitated the decline. Should the average fall another 150 points within the same day, trading would again be halted, this time for two hours.

Committee on Uniform Security Identification Procedures (CUSIP) number: A unique nine-character alpha/numeric code appearing on the face of each stock certificate that is assigned to a security by Standard & Poor's Corporation. The number is used to expedite clearance and settlement.

Common Stock: A class of securities representing ownership and control in a corporation and that may pay dividends as well as appreciate in value.

Compliance Departments: Departments set up in all organised stock markets to oversee market activity and make sure that trading complies with Securities and Exchange Commission and other Exchange regulation.

Confirmation: Formal memorandum from a broker to a client giving details of securities transaction. When a broker acts as a dealer, the confirmation must disclose that fact to a customer.

Cooling-Off Period: The period after a company's prospectus has been filed with the Securities and Exchange Commission and before offering is made to the public.

Customer Protection Rule: An SEC rule that requires broker/dealers to establish separate reserve accounts into which customer credit balances are maintained. The rule prohibits a firm from using customer balances to finance its own trading. The rule also requires firms to gain possession of customers' fully paid and excess margin securities promptly, and to segregate them properly.

Dealer: Any person or company in the business of buying and selling securities for his or her own account, through a broker or otherwise.

Depth of Market: The number of shares of a security that can be bought or sold at the bid and ask prices near the market without causing a dramatic change in price.

Derivative: A generic term often applied to a wide variety of financial instruments that derive their cash flows, and therefore their value, by reference to an underlying asset, reference rate, or index.

Discretionary account: An account empowering a broker or adviser to buy and sell without the client's prior knowledge and consent.

Downtick: A transaction executed at a price lower than the preceding transaction in that security, or a new quote registered at a lower price than the preceding quote in that security.

EDGAR: Electronic Data Gathering, Analysis, and Retrieval (EDGAR)–An electronic system developed by the Securities and Exchange Commission. EDGAR permits companies to file electronically with the SEC all documents required for securities offerings and ongoing disclosure obligations. EDGAR became fully operational mid-1995.

Eligibility rules: The Code of Arbitration states that no claim shall be eligible for submission to arbitration where six years have elapsed from the occurrence or event giving rise to the controversy.

Equity: The ownership interest of stockholders in a company. Also, the excess of the market value of securities over debit balances in a margin account.

Excessive trading: A broker excessively trades an account for the purpose of increasing his or her commissions, rather than to further the customer's investment goals.

Ex-dividend date: The date on or after which a security begins trading without the dividend (cash or stock) included in the contract price.

Federal Reserve System: A federal government institution created by Congress to administer the nation's credit and monetary policies. Among other things, the Board of Governors of the Federal Reserve System sets the initial amount of credit that broker/dealers (as well as other lenders) may extend to customers to purchase securities.

Fourth Market: The direct trading of large blocks of securities between institutional investors through a computer network.

Floor Broker: An exchange member who executes orders to buy or sell futures and options in the trading ring on the floor of a commodities exchange.

Green shoe: A provision in an underwriting agreement that if there is an exceptional public demand, an Issuer will authorize additional shares for distribution by the syndicate.

Hypothecation: The pledging of securities or other assets as collateral to secure a loan, such as a debit balance in a margin account.

Individual Investor: A person who buys or sells securities for his or her own account. The individual investor is also called a retail investor or retail shareholder.

Initial Public Offering (IPO): A corporation's first offering of stock to the public. Companies making an IPO are seeking outside equity capital and a public market for their stock.

Inside Market: The highest bid and the lowest ask (offer) prices among all Market Makers competing in a Nasdaq security; the best bid and ask prices for a security.

Inside Spread (Inside Quote): The difference between the best bid and best ask among all securities is the highest bid and lowest offer being quoted among all of the Market Makers competing in a security. Since the spread is the aggregate of individual Market Maker spreads, it is narrower than an individual dealer spread or quote.

Institutional Investors: Corporations that invest on behalf of individuals and companies. Institutional investors, particularly pension funds and mutual funds, hold an increasing portion of the value of U.S. equities. At the end of 2003, private and public pension funds together held $3.3 trillion or 23.9% of total equities outstanding, according to the Federal Reserve Board's Quarterly Flow of Funds Report. Overall, U.S. institutional investors, who owned only 7.2% of all equities in 1950, now hold a total of $7.9 trillion, or 57.8% of outstanding equities.

Institutional Networks Corporation (INSTINET): A computerized service that allows subscribers to display tentative bid and ask quotes. INSTINET registered as a stock exchange with the Securities and Exchange Commission; it supports the "fourth market."

International Organization of Securities Commissions (IOSCO): IOSCO attempts to harmonize international securities regulation, and supports the development of securities markets around the world.

Investor: A person who buys or sells securities for his or her own account or the account of others.

Liquidity Ratio: A measure of the trading volume of a security associated with a 1 percent change in its price. The higher the ratio, the more shares that can be traded with little change in price.

Locked or Crossed Quotations: A temporary and unusual condition where the ask (offer) price of one Market Maker for a security is the same or lower than the bid (buy) price of another Market Maker. Locked or crossed quotations may occur in fast-moving markets.

Maloney Act: Also called the Maloney Amendment provides for the regulation of over-the-counter securities markets through national associations registered with the Securities and Exchange Commission. The act was passed in 1938 to add Section 15A to the Securities Exchange Act of 1934.

Margin Call: A demand for additional margin funds when futures prices move adverse to a trader's position, or if margin requirements are increased. Buyers of options are not subject to margin calls.

Market Capitalization: The price of a stock multiplied by the total number of shares outstanding. Also, the markets total valuation of a public company.

Market Maker: A firm that maintains a firm bid and offer price in a given security by standing ready to buy or sell at publicly quoted prices.

Market Maker Spread: The difference between the price at which a Market Maker is willing to buy a security and the price at which the firm is willing to sell it.

Market Order: An order to buy or sell a stated amount of a security at the best possible price at the time the order is received in the marketplace.

National Association of Securities Dealers (NASD): NASD is the world's largest electronic stock market with approximately 3,300 companies.

Nasdaq International Service: The extension of The NASDAQ Stock Market to the United Kingdom. The service supports a European trading session from 3:30 a.m. to 9 a.m. eastern time (U.S.). This enables participants to monitor trade during London market hours. NASD members are eligible to participate in this session through their U.S. trading facilities or approved United Kingdom affiliates.

Nasdaq National Market: More than 3,900 companies that are the larger and generally more actively traded Nasdaq securities.

National Securities Clearing Corporation (NSCC): A securities clearing corporation formed in 1977 by the merger of the National Clearing Corporation, owned by the NASD, and the clearing facilities of the New York Stock Exchange (NYSE) and the American Stock Exchange (AMEX). It is a medium through which trades in the respective participants' markets are cleared and settled.

New York Stock Exchange (NYSE): The NYSE is the largest equities market place in the world with 2800 companies valued at $18 trillion in the global market capitalization. There are 470 non-U.S. companies with a total value of $6 trillion trading on the NYSE.

Option: An instrument that gives the owner the right to buy or sell a specified number of shares of a specified stock at a specified price within a specified period of time. A call option allows the buyer to purchase the underlying stock at any time up to the expiration date of the contract. A put option allows the buyer to sell the underlying stock at any time up to the expiration date of the contract.

Order Ticket: A form completed by a registered representative of a brokerage firm upon receiving order instructions from a customer.

Over-The-Counter (OTC): A market for securities made up of dealers who are generally not members of a securities exchange. The OTC market is conducted over the telephone and deals primarily with stocks of companies without sufficient shares, stockholders or earnings to warrant listing on an exchange. OTC firms may act as either as principals or dealers, buying and selling stocks from their own inventory and charging a mark-up, or as a broker or agent and charging a commission.

OTC Bulletin Board (OTCBB): is a regulated quotation service that displays real-time quotes, last-sale prices, and volume information in over-the-counter (OTC) equity securities.

Over-the-Counter (OTC) Securities: Securities that are not listed and traded on an organized exchange.

Penny-Stocks: Low priced issues, often highly speculative, selling at less than $1 a share.

Pink Sheets: Daily printed listings containing quotations for thousands of over-the-counter stocks that are not listed on any of the major stock markets. These quotations are entered by dealers acting as Market Makers in the individual securities. The pink sheets are printed by the National Quotation Bureau.

Point: In the case of stocks, a point means $1. In the case of bonds, a point means $10

Prospectus: A formal written offer to sell securities that sets forth the plan for a proposed business enterprise, or the facts concerning an existing one that an investor needs to make an informed decision.

Proxy: Written power of attorney given by a shareholder of a corporation, authorizing someone to vote on his or her behalf at corporate meetings.

Proxy statement: Material information required by the Securities and Exchange Commission to be given to a corporation's stockholders as a prerequisite to solicitation of votes. It is required for any issuer subject to the provisions of the Securities Exchange Act of 1934.

Public Float: The portion of a company's outstanding shares that is in the hands of public investors; shares not held by company officers, directors, or investors who hold a controlling interest in the company.

Put: A bondholder's right to redeem a bond before maturity; a contract that grants the right to sell at a specified price a specified number of shares by a certain date.

Qualified Institutional investor: An institutional investor permitted under Securities and Exchange Commission rules to trade privately-placed securities with other qualified institutional investors without registering the securities with the SEC. A qualified institutional investor must have at least $100 million under management.

Quarterly Report (Form 10 Q): A report, required by the SEC of publicly-held companies, filed quarterly, that provides un-audited financial information and other selected material.

Real-Time Trade Reporting: A requirement that Market Makers report each trade in a Nasdaq security to Nasdaq within 90 seconds of execution.

Red Herring Prospectus: A preliminary prospectus issued by underwriters or issuers to gauge interest in a prospective offering. It receives its name from the warning, printed in red, that information in the document is incomplete or subject to change before the issue.

Safe Harbour: The "Safe Harbour for Forward-Looking Information" allows company management to discuss in good faith a company's prospects and financial projections with analysts and investors without fearing litigation.

Secondary Market: Markets where securities are bought and sold subsequent to original issuance.

Secondary Offering: A registered offering of a large block of a security that has been previously issued to the public. The blocks being offered may have been held by large investors or institutions, and proceeds of the sale go to those holders, not the issuing company.

Securities Acts Amendments of 1975: Considered the most significant securities legislation since the 1934 Act, this act ended fixed commission rates, initiated action toward development of a national market system, and granted the Securities and Exchange Commission final say in the adoption of rules by any of the self-regulatory organizations.

Securities Industry Association (SIA): The principal trade association and lobbying arm of the securities industry.

Securities Investor Protection Corporation (SIPC): A non-profit corporation that insures investors against the failure of brokerage houses, similar to the way that the Federal Deposit Insurance Corp. insures bank deposits. Coverage is limited to a maximum of $500,000 per account, but only up to $100,000 in cash. SIPC does not insure against market risk.

Self-Regulatory Organization (SRO): An entity, such as the NASD, or NYSE responsible for regulating its members through the adoption and enforcement of rules and regulations governing the business conduct of its members.

Sell-Side Trader: An employee of a retail broker, institutional broker and trader, or research department who engages in securities transactions settlement.

Settlement Date (T+3): The date specified for delivery of securities between securities firms, usually three business days after the execution of an order.

Short Sale: Sale of shares of a security that the seller does not own. Such sales are made in anticipation of a decline in the price of the security to enable the seller to cover the sale with a purchase at a later date, at a lower price, and thus at a profit. Securities and Exchange Commission rules allow investors to sell short only when a stock price is moving upward. This prevents "pool operators" from driving down a stock price through heavy short-selling, then buying the shares for a large profit.

Short Interest: The total number of shares of a security that have been sold short by customers and securities firms that have not been repurchased to settle short positions in the market.

Small Capitalization Stocks (Small Caps): are low-priced, thinly traded, risky offerings by small companies.

Small Order Execution System (SOES): Automated execution system for processing small order agency executions of Nasdaq securities (up to 1,000 shares).

Specialist: A member of a stock exchange through which all trades in a given security pass.

Split: The division of outstanding shares of a corporation into a larger number of shares. For example: in a 3-for-1 split, each holder of 100 shares before would have 300 shares, although the proportionate equity in the company would remain the same. A reverse split occurs when the company reduces the total number of outstanding shares, but each share is worth more.

Spread: The difference between the bid price at which a Market Maker will buy a security, and the ask price at which a Market maker will sell a security.

Standard & Poor's Corporation: A company well known for its rating of stocks and bonds according to investment risk (the Standard & Poor's Rating) and for compiling the Standard & Poor's Index-commonly called the Standard & Poor's 500-that tracks 400 industrial stocks, 20 transportation stocks, 40 financial stocks, and 40 public utilities as a measurement indicative of broad changes in the market.

Stop-Loss Order: A customer order to a broker that sets the sell price of a stock below the current market price, therefore protecting profits that have already been made or preventing further losses if the stock drops.

Street Name: Term given to securities held in the name of a broker on behalf of a customer. This arrangement allows shares to be transferred easily. If the stock were registered in the customer's name rather than the broker's name, physical certificates would need to be transferred.

Third Market: Over-the-counter trading of exchange-listed securities among institutional investors and broker/dealers for their own accounts (not as agents for buyers and sellers). Stock exchange members or non-members may trade large blocks of stock off the floor to avoid the transaction's unsettling effect on the market, or avoid paying a commission on the sale.

Transfer Agent: An agent who maintains records of stock and bond owners to cancel and issue certificates, and resolve problems arising from lost, destroyed, or stolen certificates

Two-Sided Market: The NASD regulation that Market Makers quote both a bid and ask price for each security in which they make a market and to execute orders at those prices.

Underwriter: An investment banker who assumes the risk of bringing a new securities issue to market. The underwriter will buy the issue from the issuer and guarantee sale of a certain number of shares to investors; this is firm-commitment underwriting. To spread the risk of purchasing the issue, the underwriter often will form a syndicate (underwriting group, purchase group) among other investment firms. If the investment firm is unwilling to buy the issue outright, other underwriting forms may be used.

Underwriting Spread: The difference between what an underwriter pays for a securities issue, and the price at which he offers it to the public.

Uniform Submission Agreement: An agreement signed by the parties indicating their submission to the arbitration process, and their agreement to be bound by the determination which may be rendered.

Uptick A: Transaction executed at a price higher than the preceding transaction in that security.

Volatility: The degree of price fluctuation for a given asset, rate, or index. Usually expressed as a variance or standard deviation.

Warrant: A certificate issued by a company giving the holder the right to purchase securities at a stipulated price within specific time limits or with no expiration date (perpetual warrant). A warrant is sometimes offered by a company as an inducement to buy.

Wire House: A firm whose branch offices are linked by a communications system that permits the rapid dissemination of prices, information, and research relating to financial markets and individual securities.