Chapter 7

Crime Dimension Effects on Sentencing: Fraud, Money Laundering, Embezzlement, Tax Violations, Antitrust and Forgery

The public's sentencing preferences for a variety of so-called "white collar" crimes constitute the subject matter of this chapter. "White collar" crimes are often defined as ones with predominantly pecuniary motives: the white collar criminal offender is able to gain monetarily by exploiting through deceit either some feature of how money is loaned, stored, or transferred, or by conducting a false business transaction. Ordinarily, violence is not involved in such crimes and the perpetrators are usually persons of higher socio-economic status than those who commit street crimes. These characteristics may lead one to anticipate shorter sentences compared to the sentences for street crimes. However, because white collar offenses often involve greater losses to victims, higher sentences might be anticipated.

Fraud

There are many ways to commit fraud. The ten examples used in the design of fraud vignettes can not be regarded as a representative sample of all types of fraud, although they do cover some of the more frequent forms of fraud. In the vignettes, the ten kinds of fraud used were: 1) "...writing bad checks on an account opened using false identification;" 2) "...using a stolen credit card;" 3) "...soliciting donations for a nonexistent charity;" 4) "...obtaining a mortgage by making false claims...[which] the defendant had no intention of paying back...;" 5) "...obtaining a mortgage by making false claims...[which] the defendant intended to pay back...;" 6) "a company official ...making personal gain from inside information...;" 7) "... responsible for the failure of a savings and loan...;" 8) "...selling worthless stocks and bonds...;" 9) "... [knowingly] selling defective helicopter parts...to the federal government and endangering the lives of helicopter personnel and passengers;"and 10) "a doctor...submitting false Medicare claims..." The amount of money defrauded ranged from $200 to $80 million.

Figure 7.1 shows the impact of kind of fraud on sentence. Clearly, getting a mortgage under false pretenses with the intention of paying it back it not considered a serious crime. The median sentence for that crime is under six months. All of the other kinds of frauds received median sentences of between about two and three years, with the exceptions being selling worthless stock and bonds, selling defective helicopter parts, and a doctor making false claims to Medicare. Selling defective helicopter parts produces a median sentence of about nearly eight years, whereas the other two produce median sentences of about four years. However, many of the distributions for less serious frauds overlap with the distributions for more serious frauds so that, for example, the more lengthy sentences for obtaining donations for a nonexistent charity are longer than the shorter sentences for selling defective helicopter parts. The more general lesson seems to be that the other dimensions are very important, at least in the aggregate.

It is clear from Figure 7.1 that, generally speaking, fraud is punished far less severely than any of the crimes considered in Chapter 6, with the exception of drug possession for personal use. Only for knowingly selling defective helicopter parts to the Federal Government does the sentence approach that given routinely for street crimes. Selling defective helicopter parts endangers the safety of passengers and crews; once again it is the prospect of resulting injury or death that elicits long prison terms.

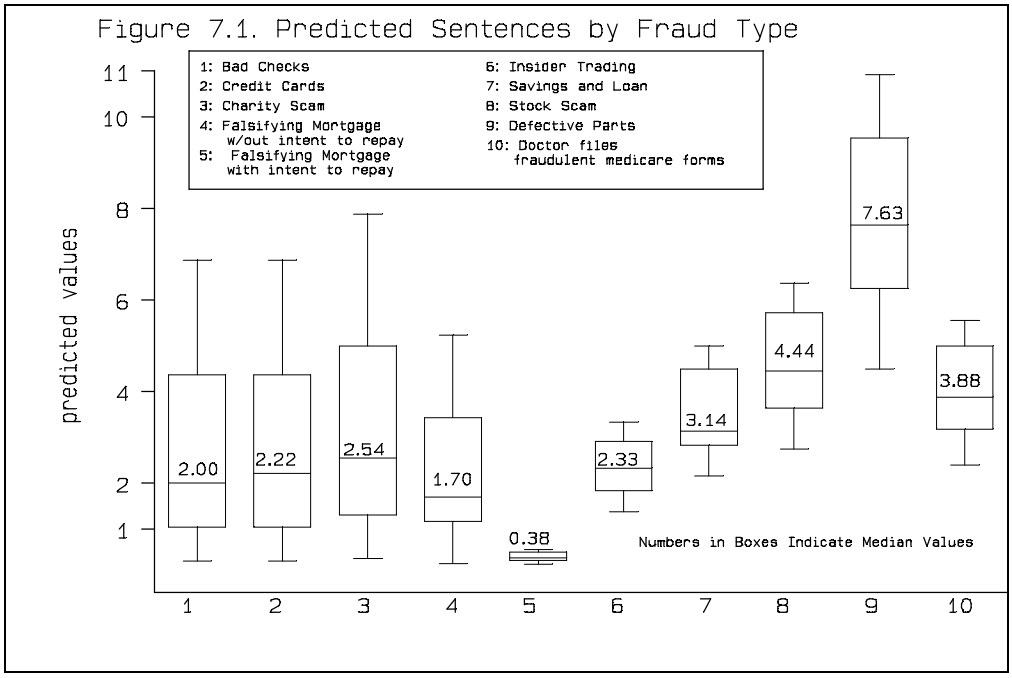
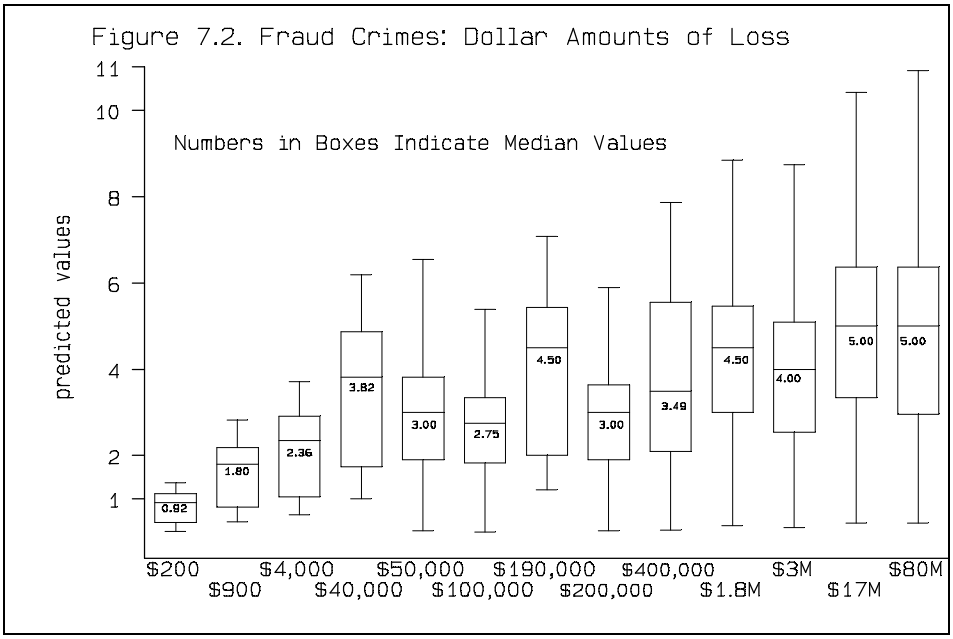


Figure 7.2 shows the impact of pecuniary gain. Although there is a general tendency for median sentence lengths to increase with increases in the amount of money defrauded, there seem to be only three broad levels that make a clear difference: $200-$4,000, $40,000-$3,000,000, and $17,000,000-$80,000,000. In these three ranges, median sentences increase from about two years to about four years to about five years. Clearly, median sentences increase more slowly than the amount of money defrauded. The dollar amounts range over several orders of magnitude, while the sentences increase at most four years.



Turning to the background characteristics of the offender, their effects are quite small. The impact of prior record is small: there is virtually no difference in impact between no prior record and two prior prison terms; for both the median sentence is about three years. The median sentence increases to about 3.5 years for offenders with four prior prison terms. None of the offender demographic characteristics significantly affected sentencing preferences.

Money Laundering

Although money laundering is often associated with drug trafficking, it can be associated with any crime in which it is desirable to make the resulting illegal earnings difficult to trace. The factorial design allowed for three kinds of money laundering: 1) "a rare coin dealer, has been convicted of failing to file forms required when receiving a cash payment of more than $10,000;" 2) "a rare coin dealer, has been convicted of arranging large cash purchases by criminals. The dealer provided rare coins, which they could then sell and appear to have earned the money lawfully;"and 3) "a bank official, has been convicted of arranging deposits of large sums of money in ways that avoided the requirement that cash transactions of more than $10,000 be reported."

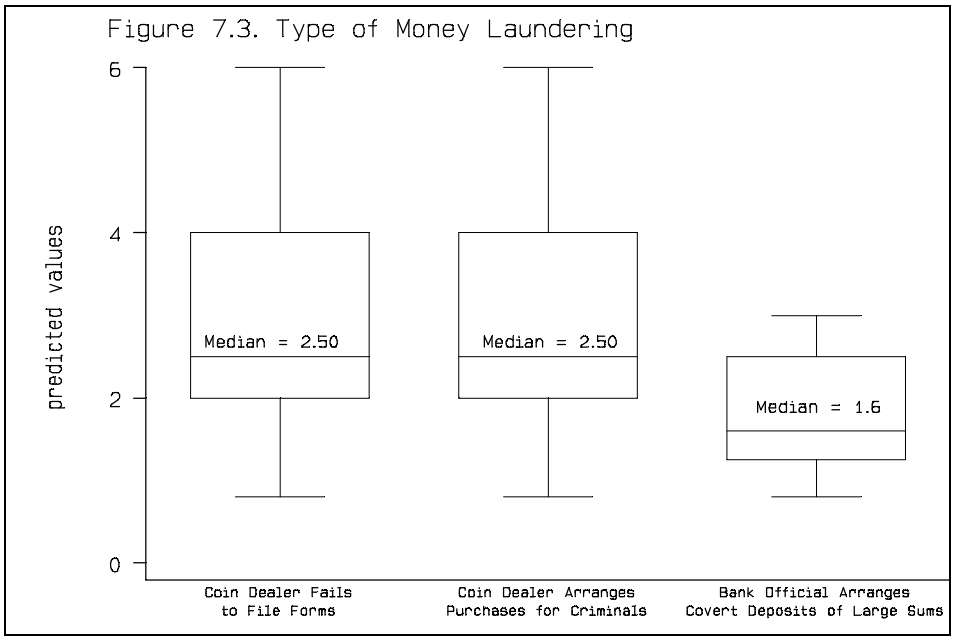
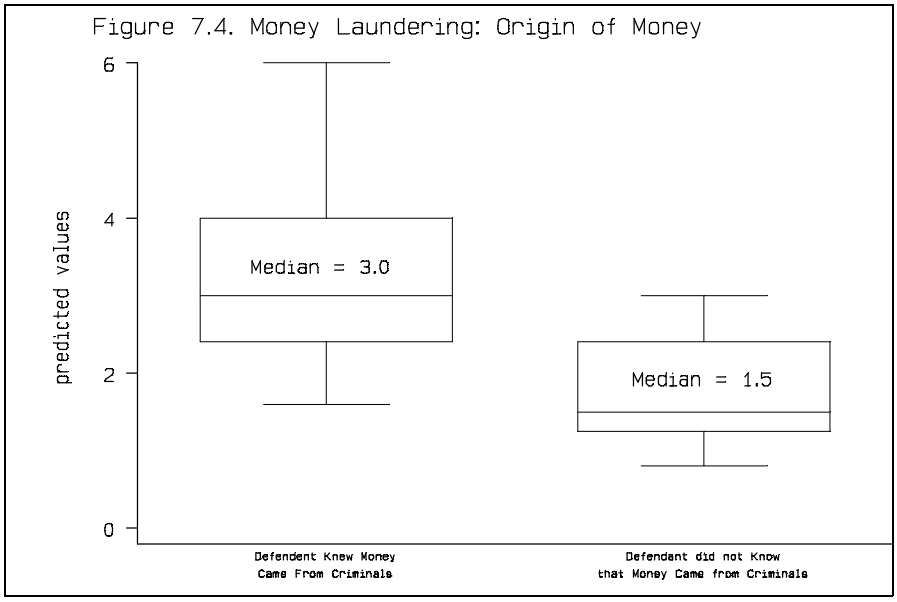


Figure 7.3 shows the impact of the kind of money laundering on the sentences given. Overall the differences are small. The median sentence when the money laundering is explicitly tied to criminal activity is 2.5 years. For the coin dealer who failed to file the proper forms the median sentenced is also 2.5 years. Somewhat in contrast, the bank official who avoided the same regulation received a median sentence of about 1.5 years. These are small differences to which respondents apparently attach little importance.

In addition, the vignette descriptions allowed for two kinds of involvement: 1) "The defendant knew the money came from criminal activity;" and 2) "The defendant did not know the origins of the money." The impacts as shown in Figure 7.4 are small, but more explicable. When the defendant knew that the money came from criminal activities, the median sentence was three years. When the defendant did not know, the median sentence was about 1.5 years. Clearly, knowing that the money involved came from criminal activities merits longer sentences.



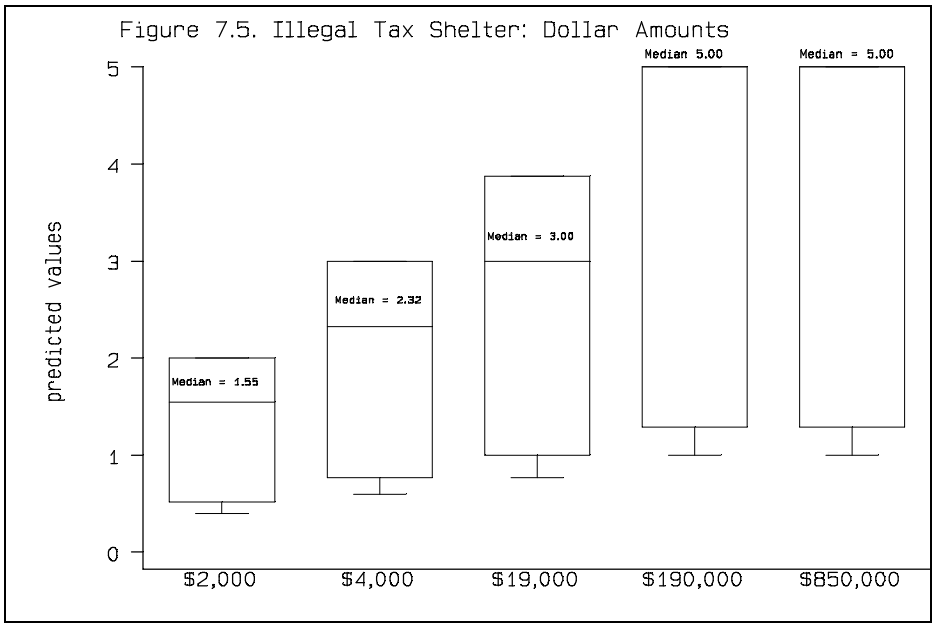
The vignette descriptions also varied the amount of money laundered. Median sentences increase as the amount involved gets larger. For laundering $19,000, the median sentence is two years; for $190,000, the median sentence is 2.5 years; and for $1,800,000, the median sentence is three years. This pattern repeats earlier findings; sentence length increases with the defendant's economic gain, but at a decreasing rate. In this instance, the dollar amounts increase by roughly a factor of ten, but the sentence increases by roughly a factor of between .20 and .25, a treatment that is consistent with the guidelines.

The offender descriptions repeat a familiar pattern. It is the defendant's prior record, not gender, employment status or family circumstances, that meaningfully affects sentence length. Defendants with no prior prison terms are given a median sentence of around 1.5 years. With two prior prison terms and four prior prison terms, the median sentence is about three years. In relative terms, these are important effects; a small baseline median sentence is increased by a large relative amount. But in absolute terms, the sentence increases are small.

To summarize, median sentences for money laundering are relatively short. They increase roughly in anticipated ways as specific features of the crime and prior record change, but the increases are small in absolute terms. Note that when none of the vignettes include physical injury or death for victims, as in this case, the sentences are rather short, even if very large amounts of money are involved. One implication is that the sentencing distributions overlap considerably, implying that respondents did not clearly distinguish between the different varieties of money laundering that the vignettes depicted.

Promoting Illegal Tax Shelters

Tax shelters come in a wide variety of forms, and it is often considered a sound business practice to use tax shelters that may be close to the edge of legality. The vignettes for this crime did not present a variety of shelters, presenting only the following description of the offender: "...convicted of promoting an illegal tax shelter to the public." The vignettes did vary the economic gain: 1) $2,000; 2) $4,000; 3) $19,000; 4) $190,000; and 5) $850,000.



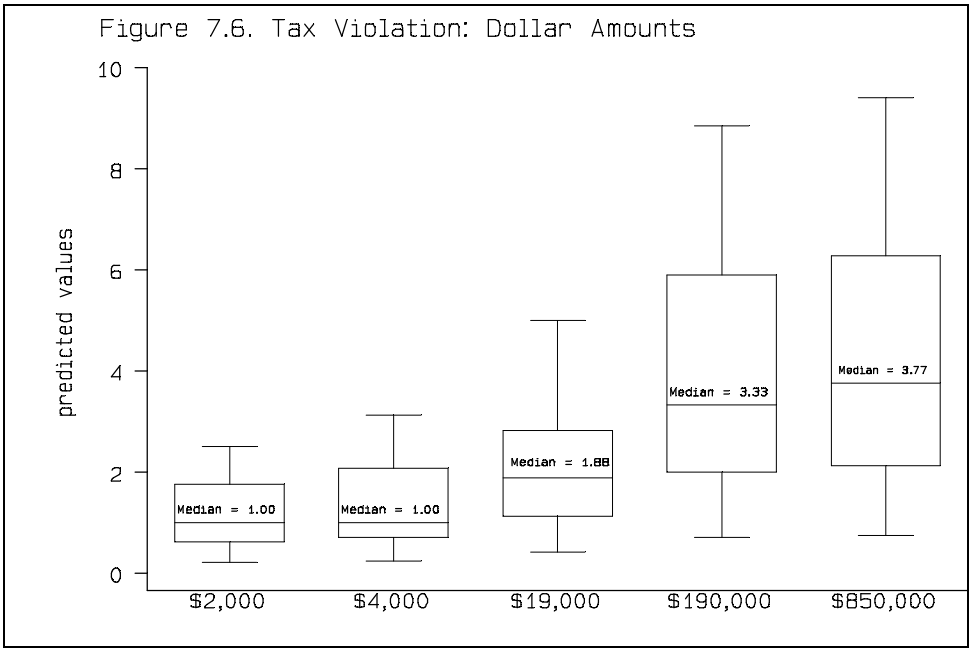
As Figure 7.5 shows, the median sentences increase with the defendant's economic gain. For the three lowest dollar amounts, the median sentences increase from about 1.5 years to a little over two years to three years. With the increase to a dollar value of $190,000, the median sentence jumps to five years. The median sentences for an $850,000 gain is also five years. Proportionately these are relatively large increments (although small in absolute terms). But, once again, the median sentences increase far more slowly than the defendant's economic gain. For example, $190,000 is ten times larger than $19,000, but a median sentence of five years is only .67 times larger than a median sentence of three years.

Considering offender background variables, male defendants are given slightly longer sentences, but employment and family circumstances clearly do not matter. Once again, it is prior record that has meaningful effects. The median sentence increases from about one year for no prior prison terms to about three years for two and four prior prison terms. In short, there are no surprises for either characteristics of the crime or of the defendant.

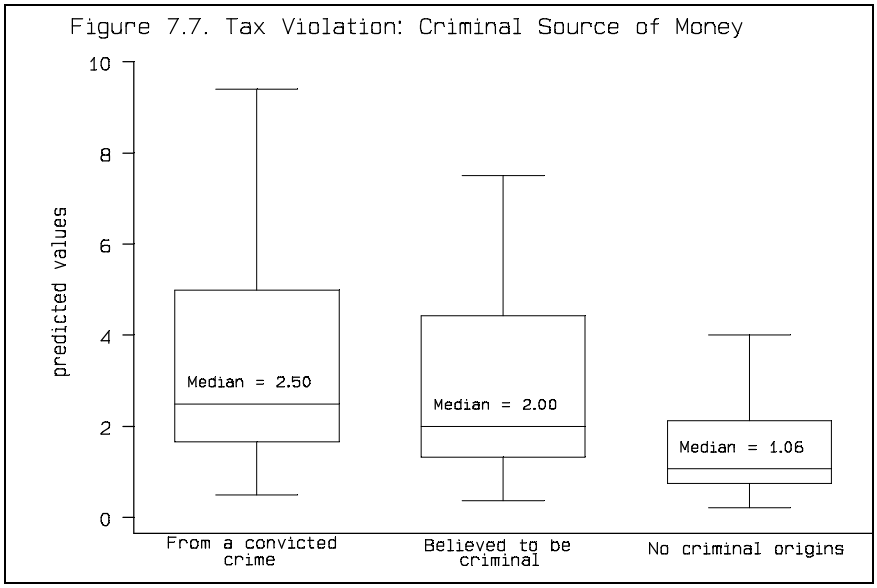
Tax Cheating

Fraud, money laundering, and promoting illegal tax shelters may seem to be something that criminals do. Tax cheating, in contrast, is something many citizens have done perhaps on a small scale, or at least have been tempted to do. Indeed, some kinds of tax cheating may be viewed more as the exercise of technical skill, as in a sporting event, than a crime. Yet, there are many different kinds of tax cheating, some that respondents might find unsavory. The vignettes recognized two kinds of tax cheating both suggesting more than a casual effort to evade federal taxes: 1) "...convicted of tax evasion for under-reporting income on tax returns;" and 2) "...convicted of failing to file income tax returns." The analysis shows that the median sentence is virtually the same for both kinds of crimes, approximately two years. (No graph is shown for these findings.) Clearly, respondents saw no distinction between under-reporting income and failure to file income tax returns.

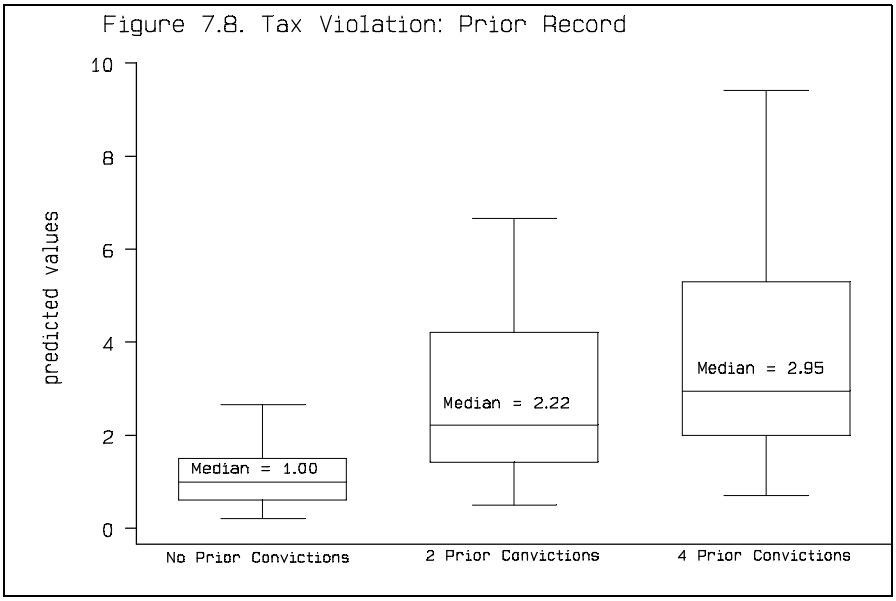
The vignettes provided for the dollar amount of taxes evaded to vary over the same five levels used for illegal shelters: 1) $2000; 2) $4000; 3) $19,000; 4) $190,000; and 5) $850,000. Figure 7.6 reveals that the dollar amounts makes a difference in the expected direction, but once again, the impact is modest. For $2000, the median sentence is one year. For $850,000, the median sentence is nearly four years. Clearly, sentences do not increase linearly with respect to the defendant's illegal gains.



The design also distinguished three different levels of related criminal activity: 1) "the income involved was traced to criminal activities for which the defendant was convicted in another court case;" and 2) "the income involved was believed to come from criminal activities for which the defendant was never tried in court;" and 3) no mention of criminal involvement. Figure 7.7 shows, somewhat surprisingly, the impact of related criminal activity is small. The median sentence when there is no mention of criminal activity is about one year. Median sentences for suspected criminal activity and proven criminal activity are two years and 2.5 years respectively. These are certainly non-trivial effects in relative terms (given the low base), but they are small effects in absolute terms.



Finally, we once again find that the important background characteristic of the defendant is prior record. Figure 7.8 shows that median sentences increase with increases in prior record: from one year to about two years to about three years. This is comparable to the increments in median sentences found in the other white collar crimes.



Embezzlement

Embezzlement is perhaps the archetypical white collar crime. Someone occupying a position of trust uses his or her white collar skills to steal money. The design distinguished three kinds of embezzlement: 1) "a bank employee...convicted of stealing bank funds;" 2) "a bank vice president... convicted of stealing bank funds;" and 3) "a postal worker ...convicted of stealing from the U.S. mails." The amount embezzled also varied among four levels: 1) $900; 2) $4,000; 3) $40,000; and 4) $400,000. Finally, the vignettes described: 1) crimes that were "carefully planned over a period of time;" and 2) crimes that were "done with very little planning." The amount of planning in this case indicates the degree of premeditation.

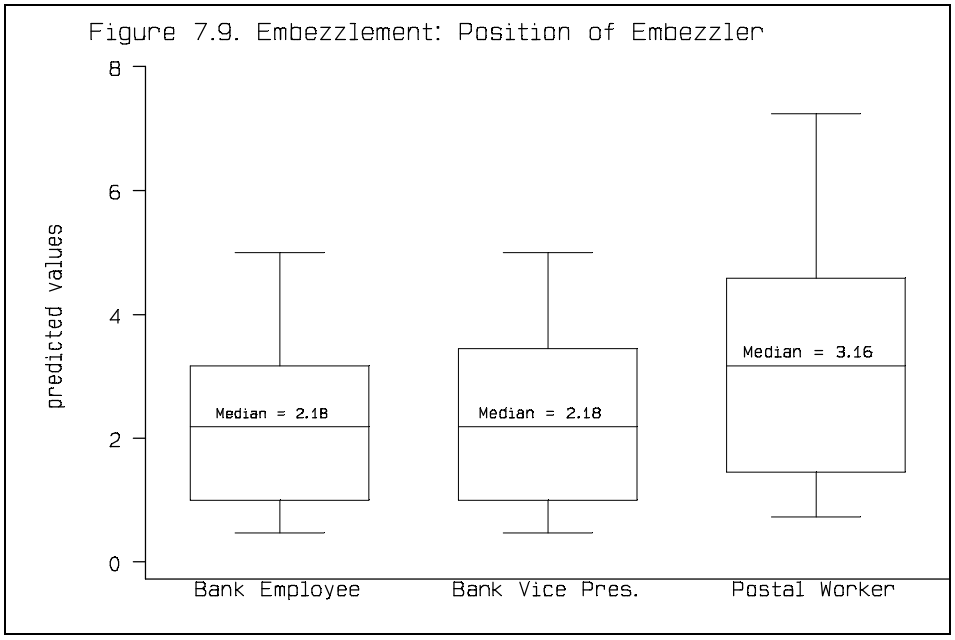
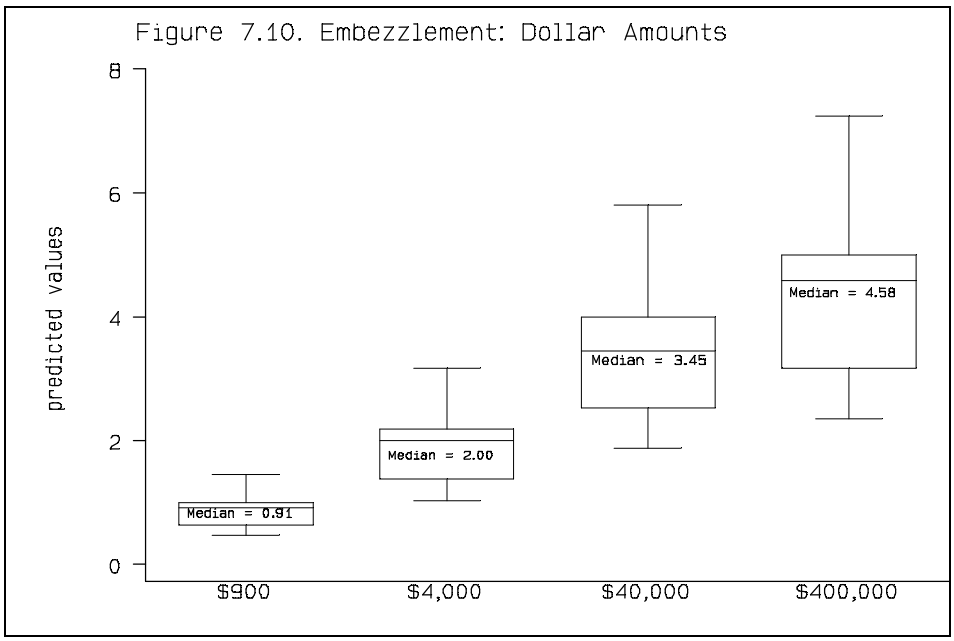
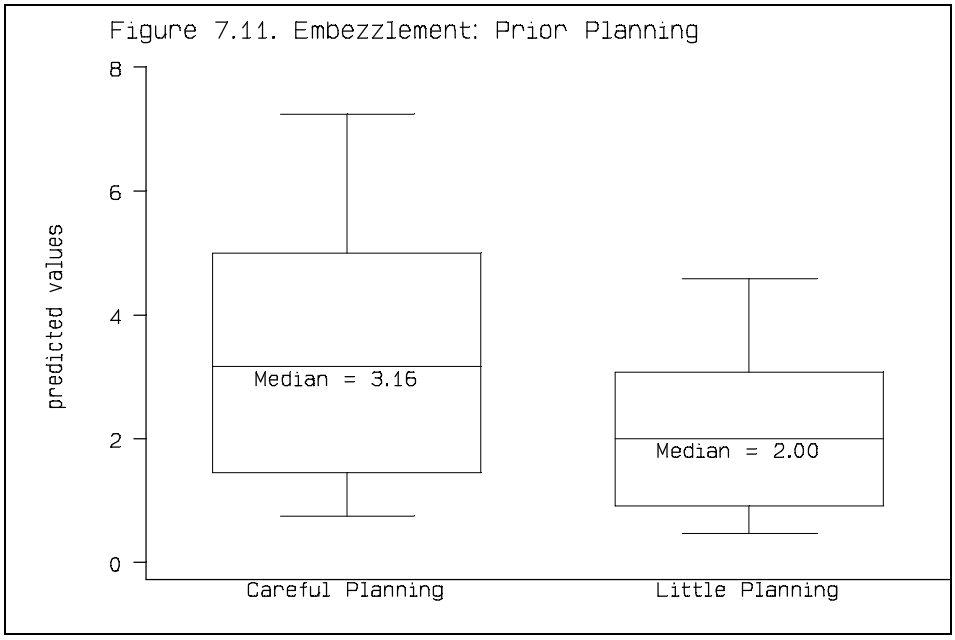


Figure 7.9 shows that the position of trust held by the defendant makes a small difference. The bank employee and the bank vice president both receive median prison terms of around two years. The postal worker receives a median sentence of about three years, longer, perhaps, because his or her crime may have members of the public as victims.

The amount of money stolen also makes a difference. Figure 7.10 shows that median sentences increase from a low of about one year to a high of about 4.5 years as the dollar value increases from $900 to $400,000. In relative terms, this is a big effect (given the small base), but in absolute terms the impact is modest. In addition, we once again find that the median sentence increases far more slowly than the defendant's economic gain from the crime.



In Figure 7.11, the impact of premeditation and planning is shown. With little planning, the median sentence is two years. With lots of planning, the median sentence is about three years. Thus, there seems to be evidence that punishment increases with premeditation, but the effect is modest in absolute terms.



Prior record was not included as a vignette dimension for embezzlement. Vignettes in which a bank employee, a bank vice president or a U.S. postal worker had served four prior prison terms surely would have appeared implausible to respondents. Of the remaining background variables (gender, employment, and family circumstances), none had important effects on median sentences.

Antitrust

Antitrust crimes often are among the white collar offenses that can involve large monetary stakes. Because entire companies and even entire markets can be affected, millions or billions of dollars can be involved.

The vignette design identified two kinds of antitrust cases: 1) "...convicted of conspiring with other companies to fix prices for soft drinks;" and 2) "...convicted of agreeing with competitors to rig bids for government contracts in order to control the market and guarantee higher profits for the companies involved." The offender was depicted as playing one of four different roles: 1) "The defendant acted under orders of a higher executive in the firm;" 2) "The defendant personally organized the agreements with the other firms;" 3) "The agreements among firms were in effect for many years — the defendant simply went along with the practice;" and 4) "The agreements among the firms were in effect for many years — the defendant, a contract manager, simply went along with the practice."

Three levels of economic gain from the crime were shown as amounts that the public "was overcharged": 1) "about $500,000;" 2) "about $3,000,000;" and 3) "about $15,000,000." Note that these are very large dollar amounts compared to most other white collar crime.

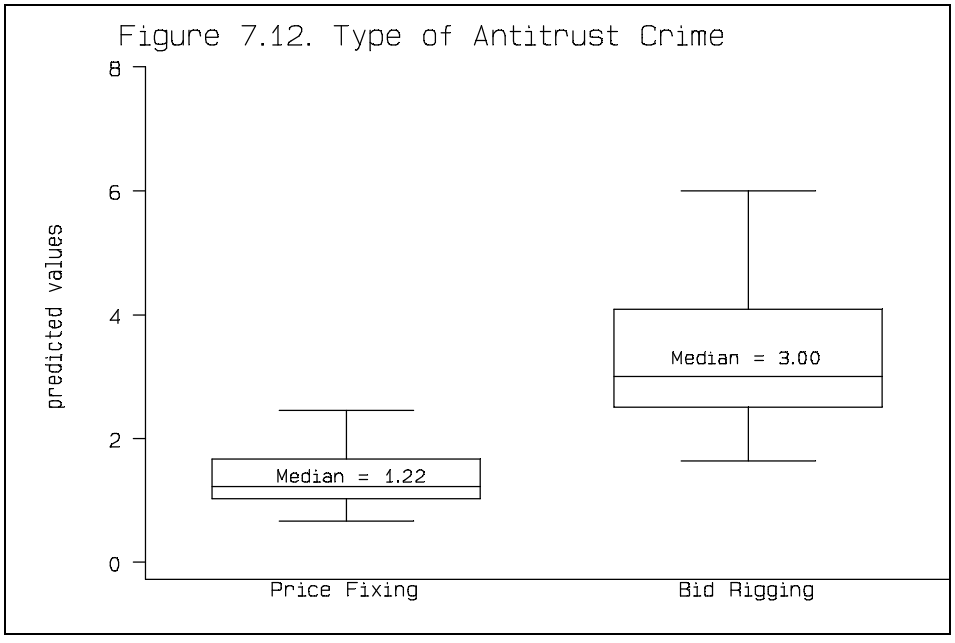


Figure 7.12 shows that the kind of antitrust crime matters somewhat. The median sentence for price fixing is a little more than one year, whereas the median sentence for rigging bids is three years. It is not obvious why the respondents gave longer sentences to bid rigging.

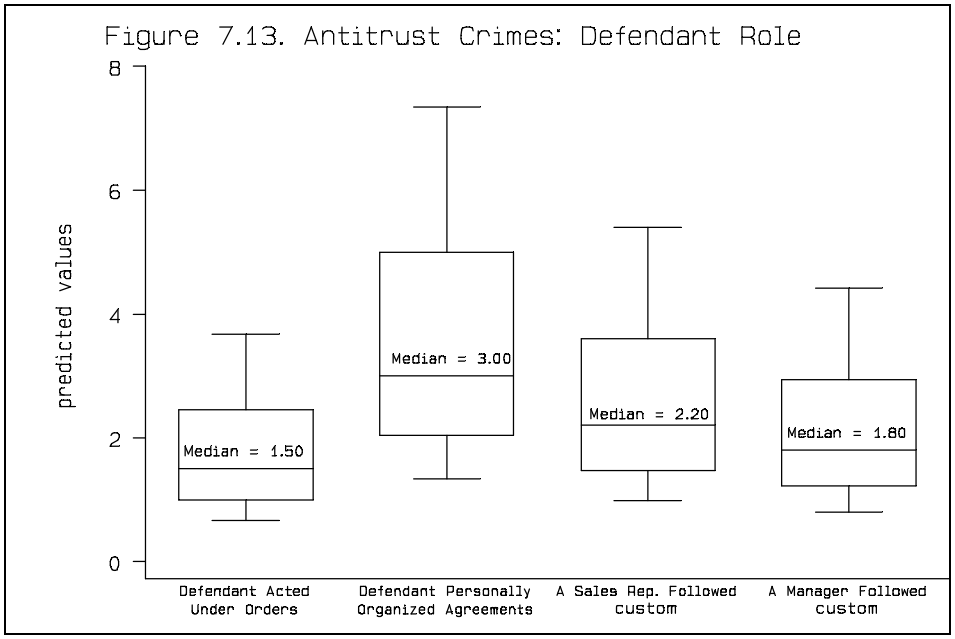


Figure 7.13 shows the impact of the defendant's role. The effects were not large. The respondents effectively did not distinguish significantly between the four roles except that when the defendant had explicitly organized the crime, the median sentence increased from about two years to about three years.

The analysis also showed that the median sentence for antitrust crimes is unaffected by the amount of money the public loses. (No graph is shown for these null findings.) It may be surprising to some that the difference between a public loss of $500,000 and $15 million has no demonstrable impact on median sentence!

The story for the demographic variables is also one of null findings. Prior record was not included because a person with four prior prison terms is not likely to get into a position with sufficient responsibility to wheel and deal in the corporate world. And, as usual, the other biographical variables did not have important effects.

In short, the respondents did not sentence antitrust cases as harshly as might have been anticipated. Overall, the sentences were very short: rarely more than four years for crimes involving very large losses to the general public. In addition, neither the defendant's role nor the amount of the loss made much of a difference.

Forgery and Counterfeiting

Forgery is again becoming a crime of considerable concern. The usual problems with bad checks remain, but new technology fueled by developments in computer hardware, peripherals (e.g., color copiers and color printers), and software, has made it easier than ever before to produce good facsimiles of currency and official documents of various kinds. There is, for example, a lively trade in forged immigration documents. The increasing use of electronic media to access and transfer cash (*e.g.*, credit cards, ATMs) provides additional opportunities for illegal gains.

The vignettes recognized three kinds of forgeries: 1) "...convicted of counterfeiting US currency;" 2) "... convicted of writing bad checks on an account opened using false identification;" and 3) "... convicted of making purchases using illegally obtained credit card numbers." Four levels of loss were allowed: 1) $1,900; 2) $19,000; 3) $190,000; and 4) $1,000,000.

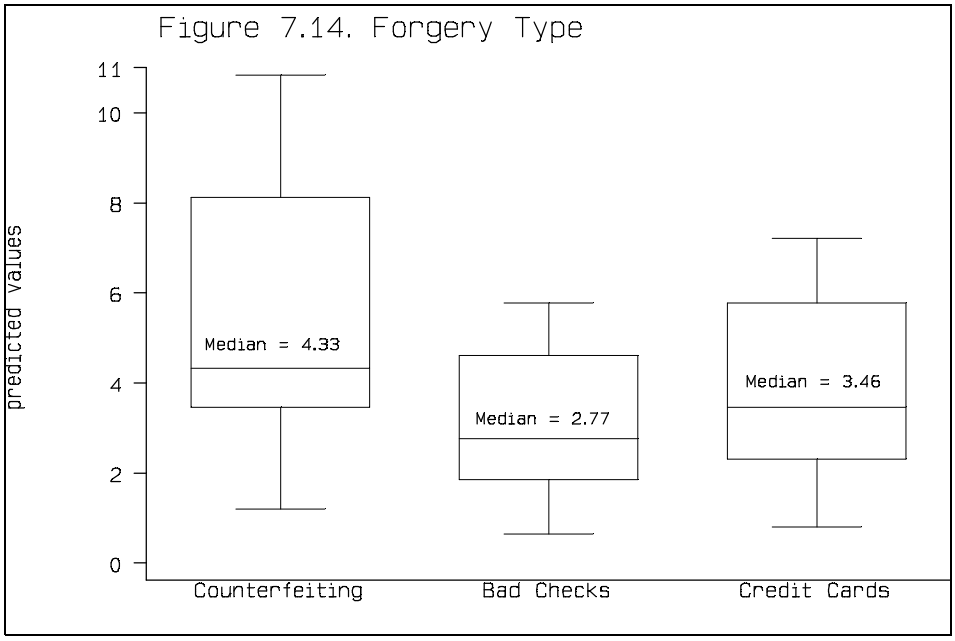
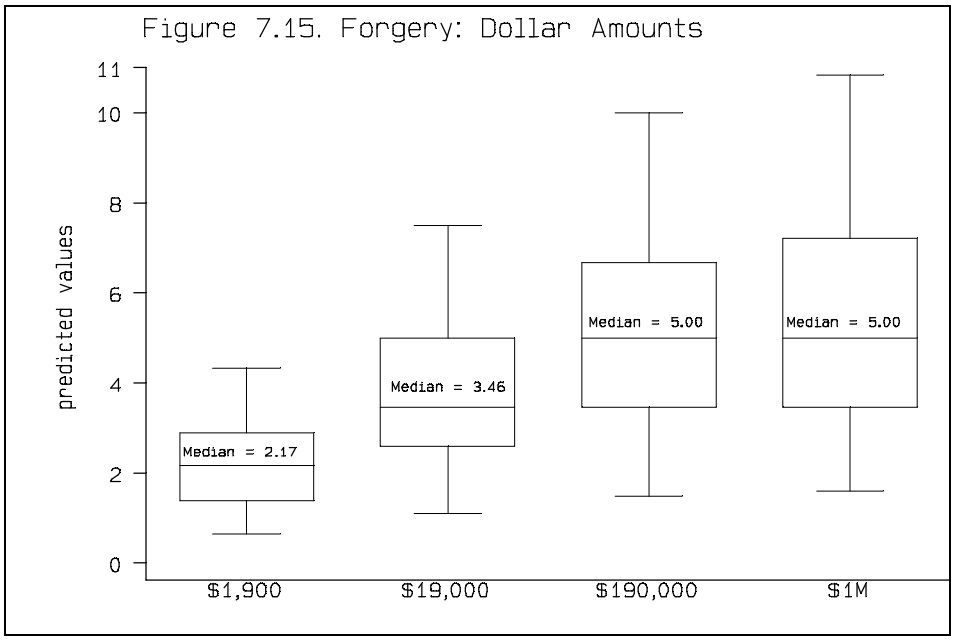


Figure 7.14 shows how the kind of forgery or counterfeiting crime translates into the sentences given by our respondents. The median sentence for writing a bad check is nearly three years. The median sentence increases to about 3.5 years for using stolen credit card numbers, and to nearly 4.5 years for counterfeiting U.S. currency. Consistent with results for other white collar crimes, the sentences are relatively short. Consequently, while the absolute changes in median sentence are not large, the relative changes (given the low base) may be important.

Figure 7.15 shows the impact of the defendant's economic gain. The median sentences increase from about two years to about 3.5 years to five years as the monetary gains increase from $1,900 to $19,000 to $190,000 to $1 million. Once again, the general trend is understandable, but the median sentences do not increase linearly with the dollar amounts.



For forgery, there are once again no important effects of the defendant's background, except for prior record. Figure 7.16 reveals a steady but modest (in absolute terms) increase in median sentence with increases in prior record. Median sentences increase from a little over two years to a little over five years over the three levels of prior record.