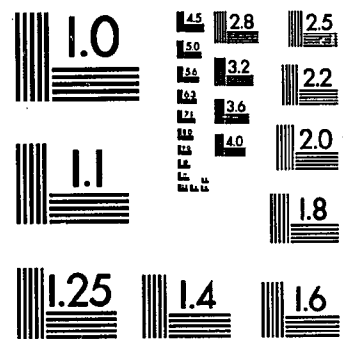
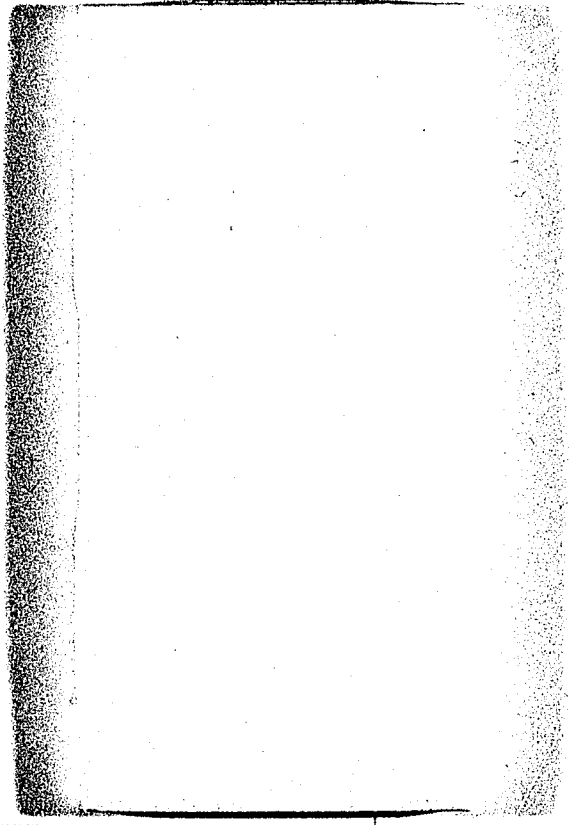


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*City University of New York*

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THE ENIGMATIC CRIME: A STUDY OF ARSON IN NEW YORK CITY

by

MICHAEL JACOBSON

A dissertation submitted to the Graduate  
Faculty in Sociology in partial fulfillment  
of the requirements for the degree of  
Doctor of Philosophy, The City University  
of New York.

1985

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Abstract

THE ENIGMATIC CRIME: A STUDY OF ARSON IN NEW YORK CITY

by

Michael Jacobson

Adviser: Professor Edward Sagarin

Until recently, fire has been thought of as an accidental and frequently tragic phenomenon. Even in New York City, which over the last several decades has experienced more fires than any city in the country, this attitude has dominated the perceptions of policy makers, law enforcement officials as well as those of the general public. Because of this complacent attitude on the part of government officials, arson has flourished, physically destroyed entire sections of New York City, caused irreparable damage to the city's economy, destroyed the social fabric of several communities, and has maimed and killed thousands of city residents over the last decade.

As New York City officials belatedly began to address arson, a myriad of problems emerged. City agencies battled over turf and official arson statistics greatly underestimated the number of arsons and especially arson for profit.

Due to a number of problems -- forensic and investigative difficulties in determining which fires are purposefully set, limited financial resources committed to arson investigation, and the wide range of motivations for committing arson (ranging from revenge and building stripping to sophisticated arson for profit schemes) -- the arrest and conviction rate for arson is far lower than for any other violent felony. Thus, very little is known about what types of people commit arson. An examination of a sample of convicted arsonists reveals that almost no one is convicted for arson for profit in New York City and, for those who are convicted, the setting of the fire is usually preceded by a highly stressful event such as the severing of a close personal relationship.

While no existing theory of crime causation can sufficiently explain arson in all its manifestations, a Marxist framework which incorporates other middle range criminological theories has the most explanatory power.

Reforming the insurance industry, which has traditionally done little to stop arson and, in fact, has indirectly encouraged it, instituting multi-government agency anti-arson efforts, training and assisting community groups, and increased prosecutorial and investigative resources are all urgent reforms if arson, and especially arson for profit, is to be significantly reduced.

The crime of arson is rampant in New York City and it is responsible for one-fourth of our fire losses, involving an annual destruction of not less than \$4 million worth of property. Despite all efforts of conscientious public officials, the strenuous activities of our fire marshals, and the detection and prosecution of numerous incendiaries, suspicious fires -- particularly among well-defined trades, are on the increase. Without exaggeration, our City is face to face with grave public danger. It is essential that public attention be aroused to the conditions which prevail.

Incendiarism in New York City,  
NYC Fire Department, 1912.

ACKNOWLEDGEMENTS

Working at the New York City Strike Force from 1978-1983 was invaluable in terms of the genesis and the writing of this dissertation. It piqued my academic interest in the subject and afforded me access to officials which would have otherwise been very difficult. My ideas and thoughts about arson come mainly from talking with concerned and committed officials, researchers, community activists and law enforcement personnel.

Perhaps more than any other group, I learned the most from New York City fire marshals and police arson detectives. Cecil Maloney and Mike DiMarco of the New York City Fire Department's Division of Fire Investigation and Lieutenant Arthur Dallas and Sergeant Joe Caporicci of the New York City Police Department's Arson/Explosion Division talked with and occasionally screamed at me for endless hours about the City's arson problem. Though we frequently disagreed about almost everything, I've come to respect these investigators' intelligence, dedication and courage. While researchers and bureaucrats like myself come and go, they remain to fight the good fight.

All the Arson Strike Force Coordinators -- John Engel, Tom Martin, Leslie Snyder, Pat Hoey and Angelo Pisani -- have been generous with their time and knowledge. Nina Schiller, a researcher at the Strike Force, constructed the questionnaire and performed the interviews of convicted arsonists which provided the basis for the chapter on arsonists as well as for

a more thorough report issued by the Strike Force. Likewise, Phil Kasinitz and Bill Burke provided invaluable insights and knowledge on the city's insurance industry.

Ed Sagarin, my dissertation adviser, not only taught me most of what I know about criminology and deviance but has spent countless hours imploring me to make progress as well as reading, re-reading, editing, and correcting the dissertation. Without him, the dissertation would still be a vague idea in the back of my mind.

Lynn Chancer cannot possibly know how much help she has been. Anything worthwhile or novel contained in this thesis is due to my innumerable discussions with Lynn.

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INTRODUCTION: WHILE THE SOUTH BRONX WAS BURNING

In the mid-1960s, Michael Maye, then president of a New York City union, the Uniformed Firefighters Association, said that the effects of arson in the City were such that it would one day be possible to see Fordham Road from City Hall. While, thankfully, the Mayor cannot yet see the Bronx from his City Hall office, arson has grown to endemic proportions, posing an even greater threat today, in New York and nationally, than it did when Maye made his not-so-facetious remark.

In 1982, according to the National Fire Protection Association, arson killed 910 civilians in the United States, an 11% increase from 1981. In addition, arson caused \$1.6 million in property damage that same year.<sup>1</sup> The monetary loss due to arson is therefore greater than that for all other violent felonies combined. Insurance industry payments for arson claims, 1979-1980, were very nearly \$5 billion.<sup>2</sup> Yet, even these huge figures are only conservative accountings of the misery brought by arson. No financial reckoning can be made of the resultant dislocation, forced migration, lost tax bases, mass destruction of housing stock and neighborhoods, and unemployment which are all tied to the crime.

Nor do data on these ramifications tell the whole story. Arson, in fact, is the most underestimated and least understood of all crimes. Hundreds of thousands of fires in the United States never receive a thorough investigation as to their cause.

Limited resources certainly curtail investigation. Perhaps equally inhibiting is the belief of policy makers and the general public that fire, like floods and hurricanes, is "natural" and random, rather than purposeful and premeditated. A willingness to accept fire as something simply fated is all too customary. In New York City, for example, only 9,899 of 39,251<sup>3</sup> fires were investigated in 1982.

Making matters even worse is the fact that even in those cases where arson is identified, there is little chance of apprehending and convicting the arsonists. According to the 1982 Uniform Crime Reports, only 20,500 out of 106,501 reported arsons resulted in arrest, the lowest rate of any major violent felony.<sup>4</sup> Since arson is rarely committed in the presence of witnesses and frequently all the physical evidence is destroyed in the fire, investigators and prosecutors must rely largely (especially in cases of arson for profit) on circumstantial evidence in building arson cases. It is exceedingly difficult to successfully mount such cases. Substantial expertise is required as well as sizable outlays of financial and manpower resources. Few municipalities are prepared or able to make this type of commitment.

Yet, arson has come into the public eye in the last few years, largely as a result of events so blatant that they could not be ignored. Not surprisingly, the initial focus of attention was on New York City, where arson is statistically the most severe. The size of the crime as it

occurs in New York, coupled with the fact that it has achieved more governmental intervention in the City than elsewhere, makes for an excellent case study. Closer examination of the New York experience also illustrates the multi-faceted aspects of arson: its inherent complexity as a crime, the diversity of motivations for its commission, the difficulties facing investigators and prosecutors, and most important, the possibilities for its long-term control. The great advantage of studying New York City is that it represents a microcosm of the manifold types of arsons which occur in other municipalities. Consequently, conclusions drawn from the New York example will have general applicability for other cities throughout the country.

On a hot July night in 1977, a major power failure in the City took place which in minutes triggered violent outbreaks of rioting, looting and arson. Until then, New York City policymakers had not seen arson as a major city-wide problem. For the next few days, local and national press as well as television carried stories and photographs of what was universally portrayed by the media as senseless violence and arson. In the face of such intense publicity, government leaders had little choice but to confront the problem in the City. Thus, that same month, the then mayor, Abraham Beame, announced the creation of a special Arson Task Force, the first formal institutionalized and multi-agency effort at combatting arson.

By the time the blackout arsons were televised to a national audience, however, the South Bronx had already become an urban wasteland while the Bushwick, Brownsville, and East New York sections of Brooklyn and Manhattan's Lower East Side were quickly following the South Bronx's example. Though much of New York City was already levelled due to deliberately set fires when government leaders undertook their first official effort at combatting arson throughout the city, no precise or exact number of purposely set fires prior to 1977 can be offered. New York City had not been counting.

How could a crime which had the power to level communities (many of which were equal in population to small cities), and which had been running out of control in New York City for almost a decade, go so unnoticed by City officials as well as an entire nation? How and why was it possible for New York City, which by the time of the broadcast of the blackout fires had already lost several neighborhoods and hundreds of lives to arson, not to know even the simplest numerical statistics about this crime? The answers to these questions lie in the nature of arson itself, in public perceptions about it, and in how politicians, bureaucracies and other institutions within society choose to handle it as a crime.

While the crime of arson has no uniform definition from state to state, it generally refers to the intentional burning of property which is used for business, commercial or

housing purposes. For example, arson in the first and second degrees in New York State refer to the intentional setting of fire in a building which the arsonist should reasonably know is occupied. The maximum penalty for this crime is 25 years, the same as for first degree robbery or forcible rape. Robbery and violent rape, however, are intimately familiar to journalists, academics, and the general public. They are the stuff of detective novels, movies, journalistic exposes, and academic treatises. This is hardly the case with arson.

Perhaps the most overriding reason for the lack of concern and knowledge about this crime is that, at least until that blackout, fires were viewed as accidents rather than as crimes. Fire, like flood and earthquake, has historically been regarded as something beyond the control of the unfortunate victims, though it is seldom an act of nature. Whether through an unforeseeable accident or through carelessness, fire is something which, except for in limited circumstances, almost nobody wants to happen. According to general public perception, the unwanted fire is deadly and universally feared but it is not a crime. It is an event not for police but for the fire departments of hundreds of towns and cities. Moreover, from the point of view of an uninformed public, no one gains anything from burning human beings, or from the killing or maiming of hundreds of civilians and firefighters each year. Firemen emerging from a building consumed by flames with a severely injured little child are seen as heroic. But the public until recently hardly dreamed that such tragedies could

result from purposive behavior and, if it did, the perpetrator was conceived of as a maniac. In fact, there was a special word for such lunacy: pyromania.

The widely held belief that most fires, except those caused by the pyromaniac, were accidental could be found not only in the general public, the press and academia, but also within the governmental sector. At the time of the 1977 blackout, New York City was experiencing 51,000 fires a year. In the preceding five years, the city had had a total of 262,000 fires. But these fires were not viewed as possible crimes and little effort went to investigating their cause. In 1976, 42 investigators in all of New York were assigned to the task of determining which fires were arson and subsequently performing a criminal investigation. Of 56,810 fires in 1976, only 6,000, or 10.6%, received any sort of investigative attention.<sup>5</sup> There was no public outcry, no voices calling for more fire investigators. But why should there have been? Fire was an accident. Yet, had the Police Department only responded to 10.6% of all possible crimes, public outcry would have been immense.

The public's lack of interest in arson may be partially explicable also in terms of where the bulk of fires were occurring. Of the City's 56,810 fires during 1976, 35,000 occurred in the southern part of the Bronx, Brooklyn's Bushwick, Brownsville and East New York, and East Harlem and the Lower East Side in Manhattan.<sup>6</sup> These

areas were the poorest in the city, and their residents, mainly ethnic minorities, wielded little political power. To the majority of New York City residents, fire and arson were isolated problems in rundown neighborhoods which had little impact on their own lives.

In fact, the perception that arson only affected people in the city's poorest neighborhoods was valid, given the geographic pattern arson actually did follow. An increasing number of arsons and of fires generally were occurring during the time that many of the city's neighborhoods had begun to change from white ethnic enclaves to areas where blacks and Hispanics were settling. The South Bronx, Jamaica, Queens and Bedford Stuyvesant in Brooklyn all exhibited this pattern. This seeming correlation was seductive in encouraging local authorities and the public to blame arson solely on the poor and minority influx.

Thus the researcher, in attempting to learn more about arson, is confronted by a crime for which little academic, journalistic or even popular folklore exists. This lack of data, both empirical and theoretical, creates an apparent paradox. Little is known about the amount and types of arson being committed and, concomitantly, public perception has largely seen all fires as accidental and not as a criminal justice problem. This in turn means that policymakers are not eager to fund programs which would deal with the problem. Without the types of data which would become available if more investigations were conducted, more arrests made, and more

analysis performed, little public or academic interest will be stimulated due to a paucity of information. A frustrating circularity comes into existence.

This thesis will attempt to address these general problems. Using the New York City experience with arson as the focus of this study was facilitated by my work at the New York City Arson Strike Force over the last several years. I have had access to a large amount of data as well as to interviews with investigators, prosecutors, researchers, victims and perpetrators of arson. This information would not normally be available to the researcher.

The study which follows will have several overriding hypotheses about different aspects of the arson problem. The first is that arson in New York City, as well as nationally, has been significantly undercounted and underestimated. In particular, arson for economic profit is far more widespread than the existing literature or the published figures of governmental agencies make apparent. This hypothesis will be examined in Chapters 2 and 3, which present a statistical overview of the city's arson problem and categorize the myriad reasons behind the setting of arson. The methods of data collection and the public policies which influence how data is analyzed will also be discussed in detail.

The fourth chapter will detail organizational and political responses to arson by New York City bureaucracies and politicians. Because so little data has been generated on arson, either by academics, scholars or the agencies responsible for dealing with this issue, the only stimulus

for official action has come from, and will probably continue to come from, dramatic yet isolated events. In the case of other violent crimes, such as muggings or rapes, the simple fact of a large or increasing incidence or a powerful pressure group (the women's liberation movement, for example) would be enough to influence public opinion and spur official action. With arson, however, the hypothesis here is that a low level of awareness about the problem and lack of reliable data combine to make public attention extraordinarily dependent on individual incidents picked up by the media or on the independent attention brought to the problem by government officials. In other words, the crime is of a particularly hidden and insidiously political nature which can be easily manipulated at the whim of public administrators. In this section, research will consist of examination of internal memos, interviews and newspaper clippings.

In the fifth chapter, the relationship between arson for profit and the insurance industry will be examined. Chapters 2 and 3 demonstrate that the incidence of arson for profit is significant underestimated, and that this profit generally derives from insurance proceeds. Chapter 5 will hypothesize that the New York City insurance industry, although publicly condemning arson, actually provides incentives for insurance fraud through its current standards and practices. The workings of the insurance industry are complex and little understood by most people. This chapter will begin with an analysis of the principles which guide insurance companies (a somewhat detailed account cannot be avoided if the relationship

to arson is to be apparent), how they make and protect their money, and the structural disincentives for reform within the industry which could eliminate much of arson for insurance fraud. The insurance industry, like the New York City bureaucracies discussed in Chapter 4, have stated goals which are completely contradicted by their organizational behavior.

The first part of the thesis, then, focuses primarily on large organizations and how they cope with, define and affect arson. In Chapter 6, attention is turned toward the individuals who are committing and being arrested for arson. No attempt will be made here to generalize from the sample of arrested arsonists to the population at large. Rather, emphasis will be placed on the context in which these individuals set fires and the reasons they cite for their acts. I will hypothesize that the types of fires for which these individuals have been arrested are spontaneous, non-premeditated and not for profit. Arrests, therefore, give a highly misleading impression of the actual types of arson being committed in New York City.

Finally, the seventh chapter of the thesis treats the usefulness of several leading criminological theories of crime causation in explaining arson. Most theories of crime are capable of explaining some portion of arson. For instance, differential association or learning theory is able to explain arson by a group of teenagers living in a ghetto who set fires for fun. Its explanatory power vanishes, however, in attempting to explain arson committed by a small

businessman whose company is rapidly losing money, for the purposes of collecting the insurance proceeds. The chapter will note the necessity of using more than one theory of crime causation to understand a crime as complex and multi-faceted as arson.

The final chapter will summarize the major findings of the thesis and suggest avenues for future research. In addition, it will list a number of public policy recommendations which, if implemented, could lead not only to a far greater understanding of arson than that which now exists but also to an almost immediate reduction in its occurrence.

Chapter 1.

Footnotes

1

Annual Report 1983, National Fire Protection Association, Boston, Massachusetts, 1983.

2

"Fire Loss in the United States during 1981," Fire Journal, 76, September 1982, pp. 66-68.

3

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4

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5

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6

New York City Fire Department, Division of Community Affairs.

CHAPTER 2. GENERAL BACKGROUND: PROBLEMS  
OF DATA COLLECTION AND STATISTICS

Especially when dealing with New York City, any examination of arson patterns must be prefaced by a general examination of the different terms, policies, methodologies, statistics, and motivations which are associated with the crime. Because it is such a complex crime, an understanding of these areas is essential to comprehend the nature, magnitude and consequences of this problem. The first section of this chapter consists of a discussion of methods by which arson statistics are collected and the many political and bureaucratic policies which affect those statistics.

Before examining New York City's arson statistics, a brief overview of the city's overall fire problem will be presented so that the context in which arson occurs is clear. In the decade from 1970 to 1980, New York City had approximately 50,000 structural fires<sup>1</sup> (fires which do physical damage to a building or structure) per year, more than any city in the world. Of these fires, about 20 percent occurred in vacant uninhabited buildings and 80 percent in occupied buildings. Of the structural building fires, 75 percent occurred in residential homes or apartments, 5 percent in commercial properties and the rest in vacant and public structures. Over this period, an average of 300 people a year died in fires or from fire-related causes.

Problems and Results of Arson Statistics Collection

The only way in which a fire is officially recorded as

arson is for such a judgment to be made by a New York City fire marshal. The fire marshals, as part of the Fire Department's Division of Fire Investigation (DFI), have full police powers and are mandated to "determine the origin of suspicious fires and to cause the arrest of suspects."<sup>2</sup> The marshal decides whether or not a fire is an arson after a thorough forensic, or physical, examination of a fire scene. Because fire marshals have all been firemen for at least five years and are given special training in fire and burn patterns and incendiary devices, they are considered to be the most qualified to make this determination.

Once the fire marshals arrive at a fire, they begin their examination of the fire scene. The forensic analysis begins only after the fire has been extinguished, and the fire marshals are able to sift through the scene searching for clues as to the origin of the fire. To make this determination, the marshals will question both civilians and firefighting personnel in order to ascertain suspicious circumstances, such as someone running out of the building shortly before the fire or threats made to someone in the building. From firefighters, the marshals will also try to learn the color of flames (which can be an indicator of certain flammable liquids), the speed of the fire's circulation, and the open or closed state of entrances and windows. They will examine the char patterns on wood beams and floors to see whether the fire spread naturally or was aided by flammable materials.

A search for the point of points of origin of the fire is an integral part of the examination. If a fire has more than one point of origin, it is usually a sure sign of arson, since it is very unlikely that an accidental fire would start at two places simultaneously. In addition, the electrical wiring and fuse boxes will be examined to see whether the fire could have had its origins in the property's electrical system. If the fire marshals come across material which they suspect of having traces of accelerant, they will frequently take a sample and have it analyzed for any evidence of flammable material. For example, if the investigators come across a part of wood floor which is charred in a fashion unlike that produced at normal temperatures, they might take a sample of the floor and have it checked for traces of accelerants such as gas, kerosene, or lighter fluid.

This technical analysis on the scene continues until the exact cause of the fire is established or until all accidental causes (such as careless smoking, faulty electrical fixtures, faulty gas pipes, kitchen accidents, etc.) have been ruled out. The fire marshals then combine the results of their forensic or "cause and origin" analysis with their interviews and make a determination of what was responsible for the fire. There are three possible conclusions that a fire marshal can reach at this point: the fire was accidental, it was arsonous, or, on the basis of all of the evidence, the answer is not ascertainable. Obviously, it is the arson determination which is most relevant to this study.

At first glance, it might seem that the simplest

way to begin a study of the city's arson problem would be through numerical incidence, or counting the number of determined arsons which occur each year. However, this is not a reliable method. To see why, one must examine four factors which have a large and problematic bearing on the collection and interpretation of arson statistics. These factors are a) the method by which fire marshals are summoned to investigate fires; b) the influence which various Fire Department policies and procedures have on the number and type of arson investigations; c) the effect of fluctuating manpower levels on the determination of arson incidence; and d) the way in which formal and informal record-keeping affect the data.

a) Method of Summoning Fire Marshals to Investigations

When the Fire Department responds to a fire scene, there is always a battalion chief or fire lieutenant who directs fire-fighting operations. The Fire Department requires that, in addition to his firefighting duties, the ranking officer at the scene (usually the battalion chief) make a report after each fire. This report, among other things, inquires into the fire's cause. The battalion chief generally chooses one of three causes: accidental, unknown, or suspicious. The battalion chief has full discretion as to how to classify the fire cause. If the battalion chief decides that the fire was accidental (from witness statements or from an admission of carelessness by a victim), he will record it as such and the fire will be officially classified in that manner. If the battalion chief cannot, through any means, even venture a guess as to the cause of the fire, he will classify it as "cause unknown," and it

will be officially recorded as a fire of unknown origin. The battalion chief may, for a variety of reasons, decide that the fire is suspicious. There are several possible reasons for a "suspicious" judgment. For example, a strong odor of gasoline in the flames may signal an intentionally set fire. If the fire is in a vacant building where nobody lives or works, it is probably a sign of an intentionally set fire. Witnesses telling firefighters on the scene that they saw or knew somebody who set the fire, or the fire spreading more rapidly than is expected, may also indicate an intentionally set fire. These and other indicators are used by battalion chiefs in the decision to classify a fire as suspicious.

Once the battalion chief decides that a fire is suspicious, he will transmit the finding from the fire scene to the central Fire Department's dispatcher. The dispatcher will then call DFI and notify them of the location of the fire. Next, DFI will send a team of two fire marshals to investigate the fire. It is from the population of battalion chief "suspicious fire" designations that the final number or subset of arson fires are drawn. The fire marshals, then, respond only to those fires labelled suspicious by a battalion chief. This represents only about one-fourth of all structural fires occurring in any given year in New York City. The rest of the structural fires go completely uninvestigated.

b) The Influence of Fire Department Policies

The second problem in interpreting arson statistics

involves changes in Fire Department policy over time which affect the identification of suspicious fires. Though the Fire Department has always had a policy of allowing battalion chiefs to independently classify fire causes, it has, in recent years, put a great deal of emphasis on the identification of suspicious fires.

In 1975, the Fire Department initiated a campaign to increase battalion chiefs' awareness of suspicious fires. The Fire Department had always adopted a more or less laissez-faire attitude toward battalion chiefs' fire cause designations. By 1978, partly as a result of this non-interference policy, the Fire Department was classifying half of all the structural fires in New York City as "cause unknown." A decision was made by the Fire Department administration that officially admitting ignorance as to the cause of half of all fires per year was unacceptable. Battalion chiefs were instructed to eliminate as many of the "cause unknown" findings as they could. Primary emphasis was given to the identification of suspicious fires, thought to be one of the major causes of the fires listed as "cause unknown."<sup>2</sup>

With this new emphasis on detecting suspicious fires, fires that would have once been labelled cause unknown were now appearing in the suspicious category. In 1975, for example, there were 49,533 structural fires in New York City of which 5,567 or 11% were classified as suspicious. In 1979, out of 43,072 structural fires, 9,981 or 23% were classified as suspicious.<sup>3</sup> The greater number and percentage of suspicious

fires in 1979 is a result of greater pressure on battalion chiefs to classify fires as suspicious. In the six year period from 1973 to 1979, fires decreased by over 6,000 while suspicious fires increased by over 4,000. This is probably due entirely to changes in reporting procedures, although there could have been other factors (such as improved techniques and better trained personnel).

c) The Effect of Fluctuating Manpower Levels on Arson Incidence

A third factor which must be taken into account when interpreting arson statistics is the number of fire marshals working at any given time. The fire marshals have never had the manpower necessary to investigate each fire for which they were officially responsible. Ideally, some investigation should be made of every fire to determine the possibility of falling into the "suspicious" category, and then a fire marshal should perform a forensic analysis on every suspicious fire. The final result would be a fairly accurate measure of arson activity (providing, as we have seen, that the battalion chiefs were doing a good job in identifying all suspicious fires). However, this has not been the case in New York City. Historically, the fire marshals have not had enough manpower to respond to the scene of every suspicious fire. In 1976, for example, there were just 65 fire marshals to investigate fires in all of New York City,<sup>4</sup> and there were more than 10,000 structural fires deemed suspicious. This would give each marshal a caseload of 158.6 suspicious fires, obviously more than can be effectively handled. Given this manpower shortage, fire marshals have had to limit the

number of cases to which they would respond.

The cases which have always been given the highest priority by the fire marshals are suspicious fires in occupied buildings, especially where there has been accompanying death or serious injury. Vacant building suspicious fires have always been a low priority with the fire marshals for two reasons. Fires in occupied buildings are more devastating in terms of human suffering and economic loss and thus are considered more serious arsons. Secondly, in occupied building fires, there is a much greater chance that there will be witnesses to the fire or that people living in the building might know of a suspect. In a vacant building, the chance of locating any eye-witnesses or anyone with information is negligible.

It has only been in the last six years (1979-1984), with the addition of 135 marshals (bringing the total number to 200), that the fire marshals have been able to respond to over 90 percent of all suspicious fires. There is no hard data on the percentage of suspicious fires to which the fire marshals responded in the years prior to 1978 but it is undoubtedly much less than 90 percent.<sup>5</sup>

d) The Effect of Formal and Informal Recordkeeping on an Understanding of the Arson Problem

The final consideration in studying these statistics is the recordkeeping and data collection practices of the Fire Department and the Division of Fire Investigation. For instance, one of the reasons that the exact percentage of suspicious fires actually investigated is not known is that DFI assigned the same

low priority in the 1970s to recordkeeping as it had to investigating vacant building suspicious fires. Statistics were kept only on the number of occupied building arson determinations. There is no record, however, of other rudimentary statistics, such as how many cases were referred for investigation, the number of cases investigated, and the number of vacant building arson determinations (more on this problem later in this chapter). Additionally, it is almost impossible to determine how many suspicious fire designations made by battalion chiefs from 1970 to 1978 were in occupied or vacant buildings. The Fire Department chose to record only the total number of suspicious fires in these years. Because the Fire Department's records did not become computerized until 1978, breaking down this data further would have to be done manually, which would be a lengthy and time consuming process.

In summary, for the years 1970 through 1977, the records show only the number of total fires which occurred, not the number of occupied or vacant building suspicious fires. Also unknown is the total number of occupied or vacant building suspicious fires investigated by the fire marshals. The only accurate figure available is the number of occupied building investigations that resulted in a determination of arson. This obviously complicates any statistical measurement of the uninvestigated portion of the marshals' caseload. Complete statistics on the number of occupied and vacant building suspicious fires and on occupied and vacant arson determinations were not available until 1978.

A Statistical Overview of Arson in New York City

Once these problems are taken into account, suspicious fire statistics in New York City can be studied within a proper context. Statistics on arson and suspicious fires are kept by the New York City Fire Department. Since the Fire Department is the primary agency involved in arson detection and investigation, it is responsible for all the appropriate statistical recordkeeping.

Two distinct time periods can be identified for examination. The first covers 1970 through 1977, the second 1978 through 1982. The first period reflects a time when there was little Fire Department effort to change or influence the statistics on suspicious fires. The data from 1978 to 1982 covers the period when the Fire Department further upgraded field reporting practices, began keeping better statistics and had a significantly greater number of fire marshals.

Table 1 presents the growth of suspicious fire activity in New York City from 1970 to 1982.

Table 1

Number and Percentage of Suspicious Fires<sup>6</sup>  
in New York City, 197 -1982

<u>Year</u>	<u>Number of total structural fires</u>	<u>Number of structural suspicious fires</u>	<u>Percent of all structural fires deemed suspicious</u>
1970	47,746	2,905	6
1971	48,904	2,463	5
1972	47,745	5,311	11
1973	49,533	5,567	11
1974	52,473	5,851	11
1975	54,957	8,509	16
1976	56,810	10,309	18
1977	50,991	8,810	17
*1978	44,670	9,408	21
1979	43,072	9,981	23
1980	44,151	10,624	24
1981	42,388	10,871	25
1982	39,251	9,899	25

\*Fire Department began new reporting procedures in this year, in addition to experiencing the effects of a more than doubling in fire marshal manpower.

The number of suspicious fires in New York City rose phenomenally from 1970 to 1976, with a slight decrease in 1977. There was a 255 percent increase in suspicious fires from 1970 to 1976. The number of suspicious fires was also increasing at a much swifter pace than were total fires. In 1970, suspicious fires were 6 percent of total structural fires; in 1976, the figure was 18 percent.

The first major rise in suspicious fires occurred in 1971-1972. This 116 percent increase from 1971 to 1972 is the largest single percentage increase in suspicious fires in one year during the last decade.

In 1977, for the first time in six years, there was a notable reduction (14 percent) in suspicious fires. However, there was also a corresponding 10 percent decrease in total structural fires.

In 1978, the first year of the Fire Department's effort to influence reporting procedures, there was only a 7 percent increase over the 1977 figure. However, this increase was accompanied by a 12 percent decrease in total structural fires. The percent of all fires determined suspicious rose from 17 percent in 1977 to 21 percent in 1978. Thus, by 1978, more than one out of every five fires in the city was considered suspicious. In 1979, suspicious fires rose 6 percent while total fires declined slightly. The percentage of all structural fires determined suspicious continued to increase slightly until, in 1982, one out of every four fires was labelled suspicious.

The figures for 1977 and 1978 must be examined closely to see the effect of the new reporting practices. In 1978,

suspicious fires increased by almost 600 from 1977 at the same time that structural fires decreased by 6,000. If we look at the 1977 figures (before the change in reporting practices), suspicious fires decreased by 1500 with a decrease of 6000 structural fires from 1976. Thus, the trend from 1976-1977 was totally reversed in 1977-1978. In 1979, structural fires continued to decrease, though only by about 1500, while there was an increase of over 500 suspicious fires. Structural fires remained relatively constant until 1980 when they began to decrease. By 1982, there were 39,251 structural fires in New York City, an 11 percent decrease from 1980. The percentage of fires labelled suspicious was basically steady from 1980 through 1982.

Due to the new reporting practices, the figures from 1978 must be evaluated cautiously. These are the first years in which the distinction between an actual and a statistical increase comes into play. Is the whole increase in suspicious fires from 1977 to 1981 due to new reporting practices or only part of it? If only part, then how big a part? These are questions that cannot readily be answered. The increase is probably both real and statistical -- but this is no more than conjecture. In the space of thirteen years, ending in 1982, total structural fires had declined 17 percent and suspicious fires more than tripled, with a 241 percent total increase.

While a valuable measure of fires of suspicious origin, a "suspicious" designation is not a measure of arson activity. All that the suspicious fire classification is meant to do is to summon a marshal to the fire scene. It is the marshal who is responsible for determining if a suspicious fire is arson or

Table 2.

Number of Total Suspicious Fires and Occupied Building Arson Determinations from 1970-1982 7  
(full data from 1978-1982)

<u>Year</u>	<u>Suspicious Fires</u>			<u>Arsons</u>		
	<u>Vacant</u>	<u>Occupied</u>	<u>Total</u>	<u>Vacant</u>	<u>Occupied</u>	<u>Total</u>
1970	*NA	NA	2905	NA	2834	2834
1971	NA	NA	2463	NA	2415	2415
1972	NA	NA	5311	NA	3218	3218
1973	NA	NA	5567	NA	3727	3727
1974	NA	NA	5851	NA	4234	4234
1975	NA	NA	8509	NA	2592	2592
1976	NA	NA	10309	NA	3255	3255
1977	NA	NA	8810	NA	4575	4575
**1978	3259	6149	9408	1635	4793	6428
1979	3294	6687	9981	3101	4653	7754
1980	3607	7437	11044	3473	4900	8373
1981	3322	7549	10871	3223	4482	7705
1982	2818	7081	9899	2696	4108	6804

\*Data was not kept for these <sup>NA</sup> categories during these years.  
\*\*Improved recordkeeping and additional fire marshal manpower were added in 1978.

accidental. Until he makes a determination of arson, no crime has officially occurred.

In order to study the official arson problem, I shall return to that portion of all suspicious fires which are designated to be arson. In Table 2, the number of recorded suspicious fires and the number of officially designated arsons are given for New York City, 1970 through 1982. From 1978 to 1982, this is broken down for each category by vacant and occupied structures.

The data reveals that the battalion chiefs were classifying almost no vacant building fires as suspicious in 1970 and 1971. In each year, the fire marshals found 98 percent of all suspicious fires to be occupied building arsons. The remaining 2 percent could have been either vacant building suspicious fires, occupied building suspicious fires where there was no fire marshal response, or occupied building fires which were responded to by fire marshals and found not to be arson. Thus, there could not have been more than 119 vacant building suspicious fire designations in these two years (assuming that the difference between suspicious fires and occupied arson determinations were all vacant building suspicious fires). There were, however, only 14,000 total vacant building fires in 1970 and 1971. This seems to illustrate an almost total lack of awareness of this aspect of the arson problem by the Fire Department. During the period from 1970-1977, the Fire Department kept a figure called "fires of non-accidental origin." Recognizing that it did not have enough manpower to respond to every fire, the Department decided

to create a theoretical gauge of arson activity in the city. The "fires of non-accidental origin" category combined all determined occupied building arsons and 90 percent of all vacant building fires. The theory behind this was that battalion chiefs were doing a good job labelling suspicious occupied building fires and fire marshals were investigating most of these. The Fire Department recognized, however, that while battalion chiefs were not labelling many vacant building fires as suspicious, fires do not start accidentally in buildings where no one lives. In fact, the Department estimated that nine out of ten fires in vacant buildings could not possibly be anything except purposefully set. The other one would be attributable to lightning or a legitimate accident. Thus, at the same time the Fire Department recognized that 90 percent of all vacant building fires could not happen by accident, Fire Department battalion chiefs were not classifying vacant building fires as suspicious.

The year 1972 shows a large gap between the total number of suspicious fires and the number of arson determinations in occupied buildings. Additionally, the number of suspicious fires increased over 100 percent from 1971 to 1972, while occupied building arson determinations increased only 33 percent. The increase in the total number of suspicious fires can only be explained in one of two ways. Either the battalion chiefs became more cognizant of suspicious fire causes or there were simply many more suspicious fires being set in the city. There is no

reason to believe the former, since the press coverage of arson during 1970-1981 was practically nonexistent and the Fire Department offered no formal training to improve recognition of suspicious fires. Thus, the latter seems more convincing. The number of suspicious fires in New York City more than doubled from 1971 to 1972. This increase marked the first year in which New York City's arson problem began to accelerate, especially in the South Bronx. Yet, arson determinations increased only 33 percent, probably the result of DFI's insufficient manpower to cover this sudden increase in suspicious fires.

There was a slow increase in both suspicious fires and occupied building arson determinations in 1973 and 1974. Suddenly, in 1975, the number of suspicious fires jumped 45 percent. This time, however, the increase was accompanied by a 39 percent decrease in occupied building arson determinations. The explanation for the increase in total suspicious fires is relatively straightforward. In the absence of any new Fire Department reporting procedures, we can explain the entire increase as being a "real" increase. The 45% increase in suspicious fires in 1975 represented the second stage of the city's accelerating arson problem, the first stage being the 116 percent increase in suspicious fires in 1972.

It is the 39 percent decrease in occupied building arson determinations which appears most puzzling. The number of fire marshals did not diminish in 1975 so the answer does not lie in a manpower reduction per se. Two other factors, however, probably did lead to the 39 percent reduction in the city's official "arson problem." The first was the city's emerging fiscal crisis and the second was an increasingly rigid bureaucratic structure

within the Division of Fire Investigation.

Prior to 1975, the fire marshals had generally been allowed to accumulate unlimited overtime. This provided the marshals with an incentive to work longer hours and thus perform more than their normal number of cause and origin examinations. If, for instance, a fire marshal's tour of duty ended at 9:00 but he was notified at 8:30 of three more suspicious fires, he might work until 1:00 performing the additional investigations. In the beginning of 1975, however, the city began to take severe austerity measures designed to close the huge budget deficit.<sup>8</sup> One of these measures was the elimination of all "unnecessary" overtime. Unless a fire marshal or other police officer could convince his supervisor that overtime was essential, there would be no overtime compensation. Performing cause and origin examinations on suspicious fires, except in especially serious cases, did not fall within the rubric of necessary overtime. With the cash incentive for working overtime gone, the number of investigations performed dropped, even as the total caseload of all suspicious fires increased with rapidity. In this case, a direct correlation exists between the economic health of New York City and its official crime rates. Though it is impossible to quantify the extent to which the elimination of overtime affected the number of determined arsons, there is little doubt that it played a significant role.

The other contributing factor in the reduction of determined arsons in 1975 was new bureaucratic procedures instituted by the Chief Fire Marshal in the beginning of 1975. Michael O'Connor,

appointed Chief Fire Marshal at the time by Mayor Beame, was distressed by the shabby quality of DFI's recordkeeping and report writing. Written reports following investigations, he alleged, were shallow and incomplete. There were no reports on file for cases which the fire marshals had not recorded as arson.<sup>9</sup> As a result, new standards for report writing were instituted. Complete and well-written reports had to be submitted for each case investigated.<sup>10</sup> The effect was to reduce the number of cases investigated by the marshals. They could no longer simply record a fire as arson and submit a hastily written case report. Instead, the marshals had to devote a greater percentage of their time to report writing. Whereas report writing had once involved only the last half-hour of their tour, marshals under the new procedure had to commit between one and two hours to the same task. Over the course of a year, then, thousands of hours normally spent on investigations were being devoted to writing case reports. The fire marshals found themselves with more detailed and accurate reports on a fewer number of investigations. This situation is an illustration of Garfinkel's theory that bureaucracies often have good organizational reasons for bad recordkeeping.<sup>12</sup> In a sense, the more incomplete and inconsistent the fire marshals' reports, the more complete was the overall organizational functioning. The implications of arson's exclusive definition by public agencies becomes clear through these two policies. As the controls to which the fire marshals were subject increased, official crime statistics correspondingly decreased. In any other major crime where complainants determine how much crime is recorded, these policies would have had

little effect on recorded statistics. Not so with arson. When the fire marshals operated in a relatively laissez-faire environment, replete with economic incentives, productivity in terms of arson investigations and subsequent determinations was higher. As they were forced to operate under increasing fiscal and bureaucratic constraints, the efficiency of the marshals in dealing with arson decreased.

In 1976, suspicious fires increased another 21 percent and occupied building arsons increased 26 percent. The 10,309 suspicious fires in 1976 represented a 255 percent increase over the 1970 figure. However, occupied building arsons rose 15 percent during this time.

Suspicious fires decreased 15 percent in 1977 but occupied building arsons continued to rise. The 41 percent increase in occupied building arsons in 1977 was the largest such increase in seven years, despite the large decrease in suspicious fires. The fact that the number of suspicious fires could decrease 15 percent from 1976 to 1977, while occupied building arsons could increase 40 percent during the same period, illustrates the greater number of suspicious fires during 1976 to which the fire marshals did not respond. Even though there were fewer suspicious fires in 1977 than 1976, the number of fire marshals jumped from 65 to 141 during that time. In 1977, the marshals simply responded to a greater number of suspicious fires than in 1976.

Beginning in 1978, the effects of the greater number of marshals and the improved recordkeeping at the Fire Department became apparent. In 1978, the fire marshals first began to respond to vacant building suspicious fires. In 1978, of 3,259 suspicious vacant building fires, the marshals declared 1,635,

or slightly over half, to be arson. Occupied arsons remained relatively constant, increasing only 5 percent over 1977, but the 1,635 vacant building arsons pushed the total arsons for 1978 to 6,428, or 40 percent, over 1977. This trend continued in 1979, with occupied arsons actually decreasing 3 percent from 1978, but with the number of vacant building arsons nearly doubling, from 1,635 to 3,101, an increase of 90 percent. Though the number of vacant building arsons increased 90 percent from 1978 to 1979, vacant building suspicious fires increased only 1 percent. Clearly, the increase in vacant building arsons from 1978 to 1979 was a function of having more investigators to respond to more fires, and these investigators, in turn, "created" more arson. In fact, the 21 percent increase in arson from 1978 to 1979 was due to the greater number of marshals and their ability to respond to more vacant building suspicious fires. Occupied building arsons actually decreased from 1978 to 1979. Assuming that the fire marshals investigated the same proportion of occupied building suspicious fires in 1979 as in 1978, the overall arson increase, being a function of more suspicious vacant building investigations, is very misleading and, in fact, there was probably a decrease in the actual number of arsons being committed. In fact, although the official vacant building arson problem more than doubled from 1978 to 1980, the number of total vacant building fires (suspicious and non-suspicious) actually decreased by 6 percent during that time period. Assuming that fires in vacant buildings do not start by themselves and thus that the nature of vacant building fires did not change from 1978 to 1980, the vacant building arson problem in New York City probably diminished, as

opposed to the official increase. Here, then, is an example of how reporting procedures and changes in manpower can not only exaggerate the real nature of a crime but even make crime increase while it actually decreases.

The years from 1979 to 1982 are the most complete in terms of data collection and uniformity of Fire Department policy in labelling and responding to suspicious fires. Recorded arsons reached a peak in 1980 with 8,373. Arsons began to decrease in 1981 and by 1982, arsons had decreased by 19 percent from 1980. The decrease was made up of 22 percent in vacant building and 16 percent in occupied building arsons.

During this same period, total structural fires decreased by 11 percent. Is the decrease in arsons related to the overall fire decrease? This is just about impossible to answer. Perhaps the decrease in fires was the result of people being more careful. On the other hand, the decrease in arsons may have been due to the growing arson prevention efforts of the city as well as several active anti-arson community groups. In fact, since reporting and investigation methods remained constant from 1980 to 1982, we can assume that there was an actual decrease in arson during this period. What we cannot know is the real number of total arsons or the real decrease in arson in New York City, given that 75 percent of all fires go uninvestigated.

However, several conclusions are possible on the basis of the information which has been presented in this chapter. As Table 1 indicates, the proportion of all structural fires labelled suspicious increased from 6 percent in 1970 to 25 percent in 1982. This dramatic increase was not due to a change in the composition of New York City's fire problem but rather to a change in the amount of suspicious fires and arson which were reported and investigated. The changing phenomenon of the 1970s was not a precipitous rise in arson per se but a relative and sharp increase in the attention paid to it by Fire Department officials now sensitive to the problem.

Even in light of this "sensitivity," however, only 25 percent of all structural fires by 1984 are receiving investigation attention. There is every reason to believe that if the remaining 75 percent of all fires in New York City were labelled suspicious or simply investigated, the number of officially recorded arsons would skyrocket.

Chapter 2.

Footnotes

1

This is an average of 10 years of structural fire data from New York City Fire Department Annual Reports, 1970-1980.

2

New York City Administrative Code.

3

Many fire and arson professionals have long contended that arsons make up a significant portion of fires of undetermined origin.

4

Semi-Annual Reports #5 and #8, New York City Arson Strike Force.

5

Fact Book, New York City Fire Department, 1979.

6

The fire marshals did not keep data on the number of fires to which they responded prior to 1978. However, with less than 70 fire marshals and as many as 10,000 suspicious fires a year, it would have been almost impossible to respond to anywhere near 90%.

7

All figures are from the New York City Arson Strike Force Semi-Annual Reports #1-#11.

8

All figures are from the New York City Arson Strike Force Semi-Annual Reports #1-#11.

9

This was the first year when programmatic cuts as well as layoffs were instituted.

10

Interview with Chief Michael O'Connor.

11

The fire marshals never actually achieved this goal as they still do not have complete reports for every investigated fire.

12

See Harold Garfinkel, "Good Organizational Reasons for 'Bad' Clinic Records," in Studies in Ethnomethodology, Englewood Cliffs, N.J., Prentice-Hall, 1967.

### CHAPTER 3. MOTIVATIONS FOR THE COMMISSION OF ARSON

People commit crimes for an almost infinite variety of reasons. Passion, greed, ignorance of the law, to cover up another crime, and as a rebellion against the state, are just a few examples of rationales behind the commission of criminal acts. Many crimes are associated with only one or two motivations. Rapists, for example, are often motivated by rage. People embezzle, cheat on taxes, and allow defective products to be used in buildings or cars in order to make money. For this same reason, they may rob or burgle, steal cars, commit larceny, jump turnstiles or sell drugs. Those who assault and murder usually do so out of spontaneous anger or revenge (though assault and murder for intimidation and profit is not uncommon).

The case of arson, however, is quite different. Every possible motivation for committing a criminal act is present in arson. From the most complex and sophisticated white collar schemes to non-premeditated acts of frustration and rage, arson encompasses all criminal motivations. It is a crime that cuts across all categories of race, sex, age, and class. As a criminal act which can either hide a crime, extract revenge, intimidate or coerce, turn a minor or huge profit, or express rage, arson has no equal. And anyone can do it. One needn't be big, strong, fast, brave, or smart.

In order to study the problem, however, it is helpful to categorize arson in some general terms or "ideal types." In this regard, two basic types of arson can be differentiated:

- a) arson for profit, and
- b) arson committed for all other reasons

(i.e., not for economic gain). All varieties of reasons for committing arson can be subsumed within one or the other of these headings.

A) ARSON FOR PROFIT

Arson for profit, simply defined, is the intentional setting of a fire for material gain (almost invariably financial). There is an almost endless variety of arson for profit schemes. The profit in arson-for-profit fires is usually, though not always, in the form of collecting insurance proceeds. Among motivations with the intent of defrauding an insurance company, several common ones are listed below:

1. Stop-loss. Given the pressured economic nature of owning a business or buildings in New York City, the possibility of losing a great deal of money or even total financial ruin is widespread. New technological innovations or changes in fashion can have the effect of making someone's business inventory completely superfluous. For example, a businessman who speculates that miniskirts are going to be the rage in 1981 and makes a significant investment in miniskirts may find himself going bankrupt if the miniskirt craze never materializes. Or, for example, landlords who own buildings in middle income neighborhoods which are beginning to experience an out-migration of middle income tenants and an influx of lower class tenants may find that their properties are slowly beginning to lose money.

There was no premeditation, in either of these illustrations at the point of the initial investment, to defraud

an insurance company. This option becomes attractive, however, once the prospect of financial ruin becomes clear. Since the only other options in these cases would have been to sell at a huge loss, to keep losing money indefinitely, or to declare bankruptcy, it becomes easier to rationalize the act of "selling the business to the insurance company." Not only can huge financial losses be avoided but, depending on the amount of fire insurance coverage, there may even be some financial gain.

2. Property improvement or rehabilitation. The motivation for this kind of arson is similar to the stop-loss variety in that, at the time of purchasing an apartment or property, there was no intent to commit a crime. However, a tenant who has fire insurance may realize that faulty or deteriorating furniture or kitchen equipment can be replaced by the insurance proceeds from a small fire. Likewise, a property owner who sustains unexpected property damage or for some reason must have emergency repair work can usually cover the cost of rehabilitation by setting a fire which will return enough insurance proceeds to pay for the necessary work..

Unlike the stop-loss type of arson, though, there is no intent to destroy the entire property. The intention is to have the fire do enough damage to result in a partial loss which will then be rectified with the insurance money.

3. Premeditated insurance fraud. This type of arson for profit is, by far, the most lucrative and the most destructive in terms of its direct and indirect economic effects. In this scheme, a building is bought and subsequently over-insured

to the point where the insurance coverage is worth many more times the actual value. The building is then burned. There are a number of ways to achieve this amount of over-insurance, many of them quite complex.

Premeditated insurance fraud is the type of arson which is most conducive to organized groups. For example, an organized group which has access to large amounts of capital can buy vacant buildings in various states of disrepair all over the city. They can then sell these buildings on paper back and forth among themselves. Each time the building is sold from one party to another, the price of the building is inflated. Fire insurance can then be increased to cover the higher cost of the building. Eventually, after the building changes hands a number of times and the insurance coverage has skyrocketed, the building will be burned. This process might take as little as a few months or as long as a few years. In either case, it will realize huge profits.

There are other ways to profit from arson besides the collection of insurance proceeds. Sometimes, arson is just the first stage in a chain of events which will eventually result in large financial gains.

4. Building conversion. Perhaps more than any other major city in the United States, New York has the largest middle and high income housing shortage. Demand far outweighs supply, which enables landlords in certain areas of the city to command high rents. Frequently, however, even in the most

desirable buildings, there is a significant percentage of rent controlled apartments. Tenants living in the apartments, because of their regulated and thus "artificially" low rents, are perceived by the landlord as depriving him of a significant amount of money. Landlords may, in some cases, resort to having a fire set in or near these rent controlled apartments in order to drive their tenants out. The most frequent method for vacating these buildings is to have a fire set in a rear apartment on the top floor. This accomplishes two things: it keeps the fire from spreading to other apartments and thus destroying the building (since fire moves up and toward a source of oxygen, a fire in the top and rear of a building will usually be contained in that area) and will result in significant water damage to downstairs apartments. The water damage occurs as a result of Fire Department's efforts to extinguish a fire. The fire and water damage alone will force the evacuation of a number of tenants. Some tenants will interpret the fire as a threat and subsequently leave, and others may stay until the building owner sets other fires. The last tenants will be driven out once the building begins falling into disrepair as a result of the first fire. Eventually, vandals will start setting fires in the building or tenants may set fires themselves, as acts of revenge toward the landlord who has curtailed all services to the buildings. Once vacated and rehabilitated, these same apartments may double or triple in rent.

5. Housing program money. Certain aspects of government sponsored housing assistance programs may also be used in arson for profit schemes. This is paradoxical since the provision

of housing assistance is potentially one of the best ways to prevent arson. As neighborhoods change and physical facilities deteriorate, many older buildings become unprofitable. High construction costs and rising interest rates make maintenance and repair costs for these buildings prohibitive. Eventually, structural deterioration results, causing the property to become less attractive to potential buyers or renters and therefore reducing its income earning potential. Government programs designed to assist owners in the rehabilitation of deteriorating structures or in the construction of new buildings in transitional neighborhoods offer opportunities for escaping from this financial quagmire.

It is the belief of many arson investigators and prosecutors that these programs are being badly misused. As Supervising Fire Marshal Michael DiMarco, the Director of the Intelligence Unit of New York City's Department of Fire Investigation, stated, "Federal housing programs are an incentive to destroy neighborhoods as well as to rebuild them."<sup>1</sup>

There are various ways to use housing funds to profit by arson. For example, a claim can be made that major rehabilitation work was completed, while in reality, only cosmetic work was done. When fire later destroys the property, the owner is not only able to collect increased fire insurance proceeds as a result of the "major" improvement made to the property, but also to pocket the unspent portion of the low interest loan.

Another scheme involves using arson to force out existing residential or commercial tenants and thus avoid paying relocation expenses mandated by housing assistance programs.

After the building is improved, it will then be rented to middle and upper income tenants who are able to pay increased rents. In fact, a draft of a report done by the New York City Arson Strike Force<sup>2</sup> reveals that the arson rates within two of the city's major housing programs are significantly greater than in similar control buildings not in housing programs.

6. Elimination of competition. These are fires which are usually set by owners of small businesses whose financial visibility is threatened by the appearance of similar but larger and more efficient commercial ventures. For example, if a large supermarket opened in an area which had been served by one or two small neighborhood stores, a considerable amount of business would be drained off by the greater efficiency and lower prices of the supermarket. What better way to get rid of this kind of competition than to set fire to the supermarket?

7. Building developer, contractor, and building stripping arson. Large real estate interests or building developers may become interested in acquiring, for various reasons, a particular geographical property. The reasons may be that a developer wishes to construct a large housing complex or industrial park or, because of something which is already being built nearby (i.e., housing or a convention center), may simply want to buy the land as an investment. The developer may then hire someone to start setting fires in the structures which are on the land in which the developer is interested. This will have the effect of driving out tenants and store

owners who will be more willing to sell their property. It will also lower the value of the property in the area which will allow the developer to buy at a lower price.

Contractors are frequently hired to demolish buildings. It is time consuming and, because of the labor and machinery involved, also quite expensive. Instead of investing large amounts of funds in destroying a structure, particularly large well-built buildings, a contractor might simply decide to burn it down. A well-set fire will have two effects. First, it will usually destroy most, if not all, of the building. Second, the Fire Department will, in its firefighting efforts, destroy much of the building by pumping literally tons of water into it. It will then be in a state where the contractor can clear what the fire and Fire Department have destroyed. The savings to the developer, especially one who practices this regularly, can be astronomical.

Building stripping fires are those which are set in order to have the Fire Department, in its attempts to put out the fire, tear down parts of the structure. This will expose the plumbing fixtures and other pipes that, when ripped out, can be sold to junkyards and plumbing stores. These fires are usually set in vacant buildings by junkies who depend on this trade to support their habits. Even the most dilapidated vacant buildings have brass, copper fixtures and electrical wiring which can be easily resold in New York City. Though the profits in this case cannot compare to the economic benefits from other arson for profit schemes, it is an important source

of income for a number of drug addicts in the city.

8. Welfare fraud. The city's Human Resources Administration has a policy which provides for relocation and new clothing and furniture for welfare tenants who are burned out of their apartments. Welfare tenants live, for the most part, in ghetto areas with a high incidence of fire. This policy was formulated to insure that shelter and clothing would be provided quickly in the event of a fire. It may also have had the latent function of encouraging welfare tenants, who are dissatisfied with their apartments, to start a fire in order to obtain relocation. Much of New York City housing, especially that owned by the city, is in poor condition: the prospect of being placed at the top of a relocation list in better housing might be adequate incentive for setting one's apartment on fire. If the tenant can show that furniture and clothing was also lost in the fire, the city will pay \$2,000 for this replacement. Police and fire marshals believe that welfare tenants often remove their furniture, replace it with junk furniture and old clothes they have picked up, and then burn their apartment. The net result is a new apartment as well as more furniture and clothing.

9. Extortion, coercion and intimidation. Arson has long been a favorite tool of criminal groups ranging from street gangs to highly organized criminal societies. There are many reasons why the threat of arson, as opposed to physical violence, is used to extort money from businesses and other commercial concerns. Arson, unlike physical violence, can be

committed with no eyewitnesses and, if expertly done, will never even be recorded as a crime. While a variety of steps can be taken to protect oneself from violence, it is much more difficult to protect a business from being set on fire. Anyone can commit an arson. Toughness or physical size is irrelevant. Whereas some criminals or gangs may not be willing to follow through on threats of death or physical injury, they face less of a dilemma in setting a business on fire and the threat of apprehension is greatly reduced. These factors make it much easier to burn the business of someone who does not cooperate, and this, in turn, makes the extortion threat that much more real.

These descriptions are only "ideal types," however, In reality, the different types of arson for profit are related to each other and are sometimes inexorably linked. For instance, the following history of a housing project in Brooklyn illustrates the process by which buildings convert from low/middle income housing to high rent or cooperative apartments in gentrifying areas.

The Midwood/Boro Park area of Brooklyn is a neighborhood in which real estate values have been escalating rapidly in the last decade. It is now one of the strongest housing markets in New York City. The bulk of the housing in the area is comprised of single family and duplex houses which line quiet, residential streets. In the center of the neighborhood is an out-of-character apartment complex of 700 units called

"Midwood Gardens." Until 1979, it was fully occupied, a primarily low and middle income housing project with a large minority population surrounded by a relatively affluent white community.

In 1979, the complex was sold to a corporation whose president was Lawrence Rezak, one of the city's more significant owners. Before the purchase of the complex, the building suffered very few fires and had only a small number of housing violations. The following chart illustrates what happened after the Rezak purchase:

Table 3  
HISTORY OF MIDWOOD GARDENS

<u>Year</u>	<u>Transaction</u>	<u>Occupancy</u>	<u>Fires</u>	<u>Housing Violations</u>
1976		Full	8	25
1977		Full	4	3
1978		Full	5	49
1979	7/3/79-Midwood Associates sells to Kazer Realty Corp., Lawrence Rezak, President.	Full	2 (up to 7/31/79)	45
	10/13/79-Kazer Realty sells to Sherwin Realty Corp., Lawrence Rezak, Partner.		9 (from 8/1/79 to 12/30/79)	
1980	12/22/80-Sherwin Realty sells to ATCO/Midwood Associates, Lawrence Rezak, Partner.	Full	30	533
1981		6 bldgs. occupied 5 bldgs. vacant	14	125 in 6 occupied bldgs.
1982	9/7/82-ATCO/Midwood Associates sells to LHL Realty, Lawrence Rezak, Partner.	6 bldgs. occupied 5 bldgs. vacant	7	105 in 6 occupied bldgs.

In July 1979, Kazer Realty Corp. bought the fully occupied complex which until then had only 2 fires (note that Kazer is

Rezak spelled backwards). Later that year, the buildings were sold again to a Sherwin Realty Corporation whose top partner was Lawrence Rezak. In the six months in which Rezak controlled the building in 1979, it had four times as many fires as it had had in the first six months.

By the end of 1980, the complex had 30 fires, of which 20 were suspicious, and a whopping 533 housing violations -- an 11 fold increase over 1979. In December 1980, the building was sold again, this time to ATCO/Midwood Associates. The lead partner in ATCO/Midwood was Lawrence Rezak.

By the end of 1981, 5 of the 11 buildings were fully vacant and the remaining 6 were only partially occupied. There were 14 fires and, in the 6 occupied buildings, 125 housing violations.

In September 1982, ATCO/Midwood Associates sold the building to LHL Realty whose lead partner was Lawrence Rezak. The complex deteriorated even further with 7 more fires in 1982 and 105 housing violations in the remaining 6 buildings.

Today, only 15 families live in this once fully occupied 700 unit complex. Midwood Gardens has gone from a viable housing project to a burn out ruin. But with the departure of the tenants, the complex is currently undergoing renovation and is being converted to luxury condominium apartments.

No one will be arrested for what happened in Midwood Gardens. Nobody has seen or can provide proof that Mr. Rezak intentionally burned his properties. What we do not know in this particular example of the ecology of housing destruction

is how much fire insurance was collected from those fires. How many, if any, of the fires were set by the landlord, his agents, or angry and frustrated tenants? How many fires were set by junkies or vandals once the building started to deteriorate? Here is an example where several "types" of arsons were probably set. The lines between the various motives become blurred.

One overriding set of facts remain in this example, however. Mr. Rezak bought a fully occupied building complex in 1979. Through his ownership, the buildings deteriorated and burned, displacing hundreds of families. The buildings, now being converted to condominiums, will bring Mr. Rezak a small fortune. Mr. Rezak owns over 100 properties in New York City. He is only one of hundreds of property owners whose buildings show similar patterns of deterioration -- or deterioration and renovation.

There are many other arson for profit schemes, most of which are simply variations on those discussed. Yet, not all arson is for profit, and the following types of non-economically motivated arson are the most common.

B) NON-PROFIT MOTIVATED ARSON

1. Crime Concealment. Arson is sometimes used as a method to cover up the fact that some other crime has occurred. For instance, someone who has just committed a homicide may set a fire which he hopes will consume not only a structure but the victim as well. The theory the criminal operates under is that any evidence of a homicide will be consumed in a raging fire. Arson may be used in order to destroy financial or other incriminating records that may be used as

evidence against someone at a trial. Burglars, in an effort to conceal any evidence of breaking and entering, may also set a fire.

2. Revenge. Arson is sometimes used as a way to inflict personal or financial damage on someone against whom the arsonist has a grudge or a strong resentment. Revenge fires are common among former friends, lovers, or relatives who have had an ongoing or sudden dispute. It is not uncommon, for example, for a rejected lover to reappear at the former mate's apartment and set the apartment door on fire. A person who feels unfairly treated by a business or store may immediately or some time later attempt to set the store on fire. The Bronx Social Club fire in 1976, which killed 25 people, was started by someone who was asked to leave the club a few minutes earlier.<sup>4</sup> Arsons are set by tenants against landlords who provide no building services. More recently, arson fires have been the result of racial animosities between whites and blacks. A number of cross burnings and other intentionally set fires have taken place in the homes of blacks who have moved into predominantly white neighborhoods in Long Island as well as numerous other suburban areas.

3. Vandalism Arson. Vandalism arson is usually committed by juveniles, either alone or in gangs, for a variety of reasons. Sometimes, especially in ghetto areas, setting fires can be a form of play. There is usually a high concentration of vacant buildings in these areas which can serve as a playground

for a number of children or young people. These buildings are popular targets for vandalism. Children can rationalize that no one will be hurt by a fire because the building is vacant. Once the fire is set, they can, from a safe distance, watch as the Fire Department extinguishes it. Many vandalism fires as well as false alarms occur shortly after 3:00 p.m. when children are just being let out of school.<sup>5</sup> There is a certain degree of excitement for some children in watching a racing Fire Department vehicle speed to the scene of a fire -- incentive enough for many to start fires themselves.

Other juvenile vandalism is more directed by anger toward what is being set on fire. Usually institutions, especially schools, are targets of vandalism. Juveniles who are hostile toward their school may "act out" by setting a fire. There is a psychological gain in this type of vandalism which is based on a particular animosity toward some authority that is embodied in the mind of the firesetter in a physical structure.

4. Pyromania. Pyromania, the compulsion to set things on fire, is perhaps the most widely studied aspect of intentional firesetting. Not surprisingly, this literature is almost exclusively psychological and psychoanalytical. The bulk of this work consists of studies of small samples of arrested arsonists or youthful firesetters. These studies usually seek to explain the behavioral correlates associated with firesetting. Studies of children who exhibit firesetting behavior (Norcombe, 1964; Yarnell, 1940; Siegleman, 1969) have linked this behavior to hyperactivity, aggression, stealing,

truancy, and low academic achievement. Research on adult arsonists (Inciardi, 1970; Lewis and Yarnell, 1951; Wolfard, 1972) have found that marital and sexual problems, alcoholism and other deviant behavior are all associated with adult fire-setters. The popular notion that sexual repression can lead to firesetting is also found in much of the literature (Gold, 1962; Lewis, 1965; Lewis and Yarnell, 1951; Robbins, Herman and Robbins, 1964) as is the idea of some "irresistible impulse" (Lewis and Yarnell, 1951) which leads one to set fires.

While all these various studies do contribute valuable clinical data on fire setting, they are limited in scope and methodology. The difficulty in obtaining representative samples of convicted arsonists when only 9 out of 100 are arrested is enormous. The research has primarily focused on youthful firesetters and has ignored people who commit arson for profit. Thus, when researchers are working with samples which are biased and circumscribed, reliable data and subsequent findings are difficult to secure.

Even the aforementioned "not-for profit" types of arson must be seen in a larger context. These types of arson are also linked to problems of neighborhood change and development. For instance, the South Bronx is usually put forward as an example of neighborhood residents who by themselves destroy the area in which they live.

During the 1976 World Series at Yankee Stadium in the

Bronx, there was a large outbreak of fires in the area surrounding the stadium. As television cameras focused on fire after fire, Howard Cosell explained, "Don't these people have any respect for their neighborhood. How can they do this?" This probably summed up what most people, including government policymakers, felt about the South Bronx. These people were just burning down their neighborhood. It isn't, however, that simple.

As the South Bronx changed demographically because of rising migration to the city in the 1950s and 1960s by minority groups seeking inexpensive housing, the older population began to leave for the rapidly developing suburbs and other parts of the city. This exodus occurred not only because of racial prejudices but also as a response to simultaneous processes of disinvestment in the neighborhood by banks, landlords, and insurance companies. These parties all believed that real estate values would soon be declining and that further financial investment in the areas might be risky. A study done by the National Urban League found that banks in the South Bronx were not reinvesting their money back into the Bronx.<sup>6</sup> By requiring large deposits on mortgages and charging in excess of current market interest rates on homeowner loans, these banks reduced their commitment to Bronx housing even further. As housing expert Peter Salins writes, "It is very difficult, if not impossible, to sustain new bank financing for property purchased in or near the city's zones of destruction."<sup>7</sup>

But the response of landlords is most crucial to understanding why the South Bronx succumbed to arson. Property

owners found themselves in a difficult financial bind. Faced with operating or selling their buildings at a loss, many landlords opted to "milk" their buildings. "Milking" is a process whereby landlords collect meager rents, but nonetheless profit through the withdrawal of services and maintenance from a building. The result is rapid deterioration in the condition and security of a neighborhood's housing stock. This withdrawal of upkeep frequently results in fires being set by either a) tenants enraged by the building's uninhabitable condition, b) vandals, dope addicts or neighborhood gangs who now have greater access to the building, or c) the landlord himself or his agents. The first two types of arson are usually classified by law enforcement officials as not for profit or revenge or vandalism arson. The latter is called arson for profit. Regardless of whether arson originates from a tenant's frustration or a landlord's premeditation, however, all three types eventually profit the landlord. With the burning of his or her building, it is possible to collect fire insurance proceeds as well in the last stage in the cycle of housing destruction.

A variation in this pattern of landlord response was the purchasing of buildings in the South Bronx at a very low price for conversion to welfare housing. Welfare recipients could provide a small but constant rental income through their housing allowances, permitting landlords to begin the milking process already described. After services were withdrawn, these tenants had additional motivation to burn their own apartments. This reason was an unintended consequence of a well-intentioned policy set up by the City's Human Resources

Administration which gave priority for the best housing to welfare families who had been burned out of their homes. In this particular scenario, building "milking" resulted in still greater neighborhood deterioration, relocation for welfare tenants, and insurance bonanzas for landlords.

Thus, in the South Bronx, there were fires being set by angered neighborhood tenants, juveniles, junkies and vandals as well as by property owners and their agents. But the conditions which made these kinds of not for profit arson almost inevitable were being created and shaped by a larger political economy which included banks, landlords, and insurance companies. It is this dynamic which makes the distinctions between arson for profit and arson which is not for profit very blurred, indeed.

#### Previous Studies of Arson Motivation

It is apparent from this list of motives for committing arson that it could continue indefinitely, especially where arson for profit is concerned. A logical sequence to the preceding discussion on the motivations for setting arson fires would be a discussion of the actual extent of these types of arsons. Unfortunately, data on the incidence or proportions of the various types of arsons are very sparse and what does exist is highly unreliable.

Two separate studies of convicted arsonists in New York have been done in the last 15 years. In 1967, Edwin and Lillian Robbins studied and interviewed 136 adults and 103 juveniles convicted of arson in New York City.<sup>8</sup> The following chart illustrates the motives of this sample group:

Table 4

Motives of Convicted Adult and Juvenile Arsonists in New York City, 1964

<u>Motive</u>	<u>Adult Percentage</u>	<u>Juvenile Percentage</u>
Revenge	47	5
Pyromania	30	14
Malicious Mischief	10	80
Crime Concealment	9	2
Insurance Fraud	4	-

The study found that almost half of the adults and just 5% of the juveniles committed arson for revenge. Pyromania was the next most frequent motive among adults but less popular among juveniles, 30% and 14%, respectively. Malicious mischief or vandalism fires made up only 10% of the adult motives but was the reason for 80% of the juvenile arsons. Crime concealment explained 9% of the adult arsons and only 2% of the juvenile arsons. Insurance fraud was found in only 4% of the adult arsonists and was absent entirely from the juvenile motivations.

In 1970, James Inciardi studied 138 adult arsonists on parole from New York State prisons from 1961 through 1966.<sup>9</sup>

Results from his study broke down as follows:

Table 5  
Motives of Convicted and Paroled Adult Arsonists

<u>Motive</u>	<u>Percentage</u>
Revenge	58
Excitement	18
Crime Concealment	7.5
Fraud	7
*Transfer	7
Vandalism	4

\*Transfer refers to inmates who set fires in order to be moved to another institution.

Like the Robbins' study, revenge is the most frequent motive among adults, though the proportion is larger in this study. Pyromania, or what Inciardi terms excitement, is the second most frequent motive, as it is in the Robbins' study. Inciardi found only 18% as opposed to 30% of the Robbins sample committed arson for this reason. Generally, the patterns in both these studies are similar.

Both studies have major flaws, however, which must put their conclusions in doubt. In each case, the researchers have taken a sample of convicts and attributed the findings from the sample to the general population of arsonists. Since the population from which these subjects were chosen only includes the 9% ever arrested for arson, findings from these samples only pertain to arrested arsonists and not to the population of people who set arsons. If the arrest rate were 70 to 80%, as it is for homicide, then characteristics of a sample would have a much greater chance of accurately reflecting the characteristics of the population at large.

Thus, the real effect of using samples of arrested arsonists is that it will greatly lower the number of people who have set arsons for profit. As the previous studies have pointed out, the samples consist largely of people who have been arrested for setting arson for revenge. This is because arson for revenge, like homicide and assault for revenge, frequently involves an eyewitness or a person who will know or have a good idea who committed the crime. Revenge arson

is usually an act committed on the spur of the moment without regard to one's chances of being apprehended. This carelessness naturally leads to more arrests for revenge arson than for other types. Arson for profit, on the other hand, is usually a highly rational and well thought out act, making the chances of being caught and convicted very slim. It is this type of arson which is undoubtedly underestimated in these studies.

One government study done by the Law Enforcement Assistance Administration, obviously mindful of the drawbacks of using prison populations to quantify the preponderance of different types of arson, offers the minimum and maximum amounts of the various arson motives to be found in any jurisdiction.<sup>10</sup> Pyromania, the study says, may comprise as little as 6% or as much as 25%, vandalism 35% to 50%, revenge 18% to 30%, arson for profit 3% to 19%, and crime concealment 7% to 10%. Not only does the report not indicate on what research the figures are based, but the large minimum/maximum range for each category renders this classification difficult to use.

While academic and government researchers may have published the greatest amount of writing in this area, the people who consider themselves the experts are experienced arson investigators and prosecutors. In New York City, with about 250 arson investigators and prosecutors, there is an abundance of experienced professionals, all of whom have strong opinions on the extent and kind of arson the City is experiencing.

There seem to be two schools of thought among New York City investigators. One is that arson for profit, while causing a disproportionate amount of damage and property loss, makes up a very small portion, 10 to 15%, of all arsons. It follows, within this school of thought, that the major problem in number of arsons and number of arsonists is vandalism and revenge fires. The other theory is that arson for profit makes up from anywhere between 45 to 65% of all arsons and that vandalism/revenge is a less serious problem than arson for profit. The Chief Fire Marshal in 1983 subscribed to the latter theory, as did the police lieutenant in charge of the Police Department's Brooklyn arson investigation unit.<sup>11</sup> The previous Chief Fire Marshal, who was replaced in December 1980 in a major Fire Department shake-up, and the police lieutenant in charge of the Police Department's Bronx arson investigative unit, felt that the former theory more accurately described New York City's arson problem.<sup>12</sup> Mario Merola, the Bronx district attorney and the man responsible for creating the largest arson prosecution unit in the country, said, in testimony before the U.S. Senate Committee on Investigations, that arson for profit accounts for about 20% of the city's arson.<sup>13</sup>

To confuse the issue even further, fires set by angry tenants or vandals, which are not on their face arson for profit, may actually be providing a great deal of profit to someone who is not actually setting the fire. As we have

seen in the Midwood Gardens and South Bronx examples, a landlord who is in the process of letting his properties deteriorate will indirectly encourage arson. As the buildings deteriorate, tenants may set fires to get back at the landlord, vandals and building strippers may have access to the property since there will be no security, and the landlord may even move people into his building who he hopes will intimidate the tenants to leave by either setting fires or threatening them. As these fires start to occur, tenants will leave the building and the landlord may also collect fire insurance. If the building is in a gentrifying or already stable area, the landlord may convert his empty building into a higher residential class and make even more money.

Perhaps few of the described fires in this scenario were set directly by the landlord, nor by people who would make money from setting them. Yet, the situation which allowed and encouraged these fires to happen was planned and created by the property owner. For the purpose of the present study, these fires are considered to be profit-related. Someone is profiting financially from these fires. Thus, to repeat, the line between arson for profit and not for profit is blurred much of the time.

#### Conclusion

In assessing the city's arson problem, two things become painfully apparent: accurately quantifying the incidence and types of arson is extremely difficult, and the problem,

especially arson for profit, is greater than current data suggests. The only fires being investigated are the ones that the battalion chiefs think are suspicious. There are undoubtedly other intentionally set fires which, for a number of reasons, are never found to be suspicious. Indeed, it is only the fires which are most obviously arson that the chiefs label as suspicious. The most obvious arsons are those where there are eyewitnesses and/or where large amounts of flammable liquid have been used -- two signs of the revenge-jealousy-vandalism type arsons. Those fires which the chiefs fail to classify as suspicious undoubtedly include a very high proportion of arson for profit. These are arsons which are never investigated because they are set by professionals who are skilled in making the fire seem accidental. The only way to accurately define the scope of the problem is to have every fire investigated which, at this point in the city's fiscal history, is entirely impractical. Thus, only fires that apparently are arsons are being detected and investigated. The unique role of a public agency being responsible for being both the complainant and investigator renders such devices as victimization surveys, which are used quite successfully in quantifying the incidence of other crimes, impossible to utilize.

The statistics which are available indicate that arson is a dangerous, violent and highly profitable crime. The most reliable statistics, the number of arson arrests as a proportion of arsons, indicate that law enforcement authorities

are enjoying practically no success in combatting this crime.

The following table shows all arson arrests as a percentage of arsons:<sup>14</sup>

Table 6  
Number of Arsons and Arson Arrests, 1979-1983

<u>Year</u>	<u>Number of Arsons</u>	<u>Number of Arson Arrests</u>	<u>Percentage of Arsons Resulting in Arrest</u>
1979	7,754	578	7.5
1980	8,373	450	5.4
1981	7,705	563	7.3
1982	6,804	474	7.0
1983	5,177	318	6.1

An arrest rate of 6.1 percent for identified arsons clearly illustrates the inadequacy of law enforcement agencies in attempting to cope with this problem. If the arrest statistics were compared to the real and not to the reported amount of arson in New York City, the inadequacies of the arrests being made would become obvious to all. Additionally, when arrests are made, usually for revenge, jealousy or vandalism arsons, the larger context in which the act occurred (building milking, moving in problem tenants to harass other tenants, etc.) is usually ignored.

Committing arson is not the exclusive act of any economic or social class. Arson fires are set by junkies and welfare tenants as well as by businessmen, real estate speculators and powerful landlords. Of the few people who are actually arrested for arson, almost 95% are represented by Legal Aid attorneys.<sup>15</sup> This indicates that overwhelmingly it is the poor, obviously not committing arson for huge financial gain, who are being caught and prosecuted. Those who stand to make a great deal of money through arson are doing so, except for a few isolated cases, with impunity.

Chapter 3.

Footnotes

1

Interview with Mike Demario, Head of the Fire Department's Intelligence Unit, October 2, 1982.

2

The draft report entitled A Study of Government Subsidized Housing Rehabilitation Programs and Arson: Analysis of Programs Administered in New York City, 1978-1981, looked very different than the final document.

3

All fire data is from the New York City Arson Strike Force. The housing violation data is from the Department of Housing Preservation and Development. The real estate transaction information is from the City Registry.

4

The arsonists had been thrown out of the Club for being drunk and came back to light a small fire on the stairwell leading to the Club. The fire quickly spread, killing 25 people.

5

According to the Communications Division of the New York City Fire Department, most false alarms occur between 3:00 and 6:00 p.m., the hours immediately following the end of the school day.

6

Richard Divine, Where the Lender Looks First: A Case Study of Mortgage Disinvestment in Bronx County (New York: National Urban League, 1973).

7

Richard Salins, The Ecology of Housing Destruction (New York, New York University Press, 1980), p. 100.

8

E. and L. Robbins, "Arson with Special Reference to Pyromania," New York State Journal of Medicine, Vol. 671, pp. 795-798.

9

James Inciardi, "The Adult Firesetter: A Typology," Criminology, 1970, Vol 8(2), pp. 132-149.

10

United States Department of Justice, Arson and Arson

Investigation, October, 1977, Washington, D.C.

11

Interviews with Chief Fire Marshal John Regan and Lieutenant John Gary.

12

Interviews with Lieutenant Tony Lopez.

13

United States Congress, Senate Committee on Governmental Affairs, Arson for Hire, Hearings before the Permanent Subcommittee on Investigations, 9th Congress, 1978.

14

All figures from New York City Arson Strike Force Semi-Annual Reports, 1979-1983.

15

The Nova Institute, Manpower Needs for the Investigation of Arson in New York City, New York City, December 1979.

CHAPTER 4. THE BUREAUCRATIC RESPONSE

The true extent of arson occurrence is almost impossible to ascertain. If one relies on conviction as the only legal proof that there was arson and that the arrested person was the perpetrator, once is circumscribed by the very few of an already small number of arrests that ever result in conviction. Of those convicted, a disproportionate and misleading number of offenders are drawn from the lower classes. In this distortion, the role of those who define the problem and are responsible for the investigation is important. How do the actions of those who prosecute arson, and the state agencies they represent, influence the course of detection and investigation? Since arson is the only violent felony in which the state is both complainant and prosecutor, bureaucracies designed to identify and investigate this crime deserve special attention. Official agencies play an important role in defining and attempting to reduce arson in New York City. Because the Division of Fire Investigation of the New York City Fire Department has been, and remains today, the investigative division most concerned with detection and investigation, it is important to examine how its functions and the perceptions of its members have changed over time. In the early 1980s, the Police Department emerged with an enhanced role in arson investigation, resulting in a peculiar type of interaction between those two agencies, leading to the creation of smaller bureaucracies known as task forces.

A. Historical Background

In 1915, the position of Chief Fire Marshal to head the Bureau Office Marshals was created within the New York City Fire Department. The marshal was charged with the investigation of fires, causing the arrest of suspected persons, compelling the attendance of witnesses (subpoena) and the taking of testimony under oath.<sup>1</sup> In 1970, all fire marshals, including the chief, were conferred with police officer status by the Criminal Procedure Law of the State of New York.<sup>2</sup> By 1972, there were 52 fire marshals in the New York City Fire Department, charged with investigating 47,746 structural fires. After 1972, the number of structural fires began a steady but dramatic increase. In 1976, there were 56,810 structural fires, a 19 percent increase from just 4 years earlier.<sup>3</sup>

Thus, as fires increased in New York City, the response was a concomitant growth in the city's firefighting resources. Though many marshals believed that the larger number of fires could not be caused by carelessness, the public's perception as well as the official response was predicated upon this notion. By the late 1960s, the number of structural fires had increased to the point where it became impossible for the fire marshals to respond to every fire. As the incidence of structural fires rose and the marshal's manpower remained constant, the Fire Department was forced to devise a system which would single out the fires that the marshals would investigate. The process which they devised

was one where the chief officer at the scene was charged with determining whether or not the fire should be investigated by the marshals. The chief officer summoned the marshals if he thought that the fire was of "suspicious" origin.<sup>4</sup>

This new policy created in 1967 had profound ramifications for the Division of Fire Investigation as well as for the identification and investigation of arson fires. For the first time since 1915, the marshals no longer had control over the fires that they would investigate.<sup>5</sup> They now had to depend on someone (the battalion chief) who had no training or experience in the identification of arson. Previously, the chief's sole duty had been in the sphere of containing and extinguishing the fire.

These two processes were in many ways contradictory. In directing the entire firefighting operation, remaining in contact with the firefighters on the scene and deciding on the need for additional men, the battalion chief concentrates entirely on the process of extinguishing the fire. Observing whether or not the doors or windows were locked, whether the fire had a peculiar odor, whether anyone at the scene looked suspicious, where the fire started and how it spread -- all issues related to determining if a fire was suspicious -- must be a secondary task. Moreover, even if the battalion chief was cognizant of these factors and did label a fire as "suspicious" (automatically summoning a marshal to the scene), he then was forced to do additional paperwork. Consequently,

not only was it difficult for the battalion chief to assess whether the fire was suspicious but he was also "rewarded" with further paperwork in the form of completing a report.

In addition, until 1976, the marshals had functioned as a kind of internal police within the Fire Department. Any allegations of corruption, fraud, or mismanagement among the firefighters were investigated by the marshals. These investigations could result in suspensions, fines, or even dismissals from the department. As a result, a great deal of resentment existed toward the marshals by the rank and file firefighters. Even though the Inspector General's office installed in the Fire Department in 1976 took over this internal investigation function from the marshals, vestiges of resentment still remained among many firefighters who remembered the marshals' internal affairs role and were not certain about the marshals' new roles.<sup>6</sup>

The end result was that battalion chiefs were reluctant to take any action that would lead to the appearance of a fire marshal. Labelling a fire as suspicious would "help" the fire marshals; once a marshal arrived at the fire, he might find something in the firefighting operation itself to criticize or investigate. This antagonism surely had an effect on the number of fires to which marshals were summoned.

In summary, battalion chiefs who had no training in the cause and origin of fires, little opportunity to actually notice suspicious aspects of a fire, and no special desire to

assist or see a fire marshal, were charged with several important steps. They could determine how many arson fires would be identified and investigated. Indirectly, they defined the size of the caseload the fire marshals would have to handle. The whole thrust of the DFI had changed. The Fire Department's decision to create the suspicious fire classification as opposed to increasing DFI's manpower was a clear indicator that the Department had little faith in any deterrence effect from fire investigation, downgrading the importance of identifying and investigating intentionally set fires. Resources were poured into firefighting, and DFI basically became the Division of (Suspicious) Fire Investigation.

By 1972, in spite of battalion chiefs' inexperience and reluctance to classify fires as suspicious, the number of suspicious fires was far too large for the marshals to investigate thoroughly. Many suspicious fires were never investigated, and others received only cursory investigative attention.

Media also played a role in the definition and subsequent handling of the arson problem. Had the ramifications of the FI situation been understood by more people within the Fire Department, city government and the local media, more attention would have been paid to the problem. Press coverage of the extent of the city's arson problem and how it was being handled was almost nonexistent.<sup>7</sup>

It was not until 1975 that the first major piece on arson in New York City appeared in The New York Times.<sup>8</sup>

The article, which focused on the state of the art of arson investigation in New York City, chronicled the frustration and hopelessness of the fire marshal's job. However, it had little impact on either the city government or the general public. The idea that a fire could be a serious crime was a difficult one for the city's elected officials and certainly for the public at large to accept.

By 1975, there were 58 marshals assigned to investigate 8,509 suspicious fires.<sup>9</sup> From a law enforcement perspective, this situation could only be characterized as a losing proposition. If, instead of arson, it had been robbery which was increasing at this rapid rate, one wonders whether the Police Department would have done something in response to tremendous public and political pressure. However, because this crime involved fires (which were commonly believed accidental in any case) and because arson investigation was identified with the Fire Department, the police played only a marginal role.

In 1976, of the approximately 21,000 officers in the New York City Police Department, not one full-time detective was investigating arson. Only a miniscule number of arson investigations were performed by the Police Department at all. Yet, arson is a violent felony offense, a fact which makes this lack of police involvement somewhat surprising and illogical.

This absence of police involvement in investigation can be explained by several factors. First, since the ~~DFI~~ was

charged with investigating arson, a formal mechanism for such investigation already existed. Since arson fires were investigated by the fire marshals, there was little pressure on the police to add to their already strained caseload of crimes. Second, the Police Department did not differ from the rest of the city and country in its ignorance about the extent of the arson problem. Finally, the Police Department usually operates by responding to complaints. In arson, the complainant is not an individual telephoning the Police Department but a bureaucratic agency, the Fire Department. In general, however, the police were not notified officially by the Fire Department when a fire was declared arson. An examination of the Police Department's monthly report, Complaints and Arrest Statistics, reveals a complete absence of descriptive or statistical mention of arson in New York City for the entire decade between 1970 and 1980.<sup>10</sup> Arson is the only major felony which is not listed in these reports. In terms of figures, then, arson did not exist for the Police Department. Police Department officials, as most Fire Department and other government officials, did not fully comprehend how Fire Department bureaucratic procedures were effectively masking the magnitude of the problem.

It took until 1975, the same year that the press became aware of the problem, for the New York City Police Department to become formally involved in investigating arson. What brought about police involvement at this time?

First, in 1975, there was an explosion and subsequent fire at Fraunces Tavern in the Wall Street area of Manhattan. The explosion, perpetrated by a Puerto Rican terrorist group (FALN), killed several people and caused a public outcry over the random and senseless nature of the crime. The Police Department, due partly to the pressure they felt to solve this crime and partly to fear of future terrorist acts, formed a special investigative unit to handle bombings and arson. The Arson/Explosion Division (AED) of the Police Department came into existence in the aftermath of the Fraunces Tavern explosion in 1975.

The other factor which contributed to the sudden police involvement with arson investigation was a request made by Fire Department Assistant Chief Francis Crutlers (later to become Chief of the Department). Crutlers approached the Police Department's Bronx Borough Commander Anthony Bouza to ask whether the police could somehow become involved in arson investigation in the Bronx. His request was based on dramatic increases in arson which had been taking place in the Bronx. The fire marshals did not have the requisite manpower to adequately investigate these fires. The Police Department agreed and assigned three policemen to assist the fire marshals. This was the first formal commitment by the Police Department to the investigation of arson in New York City.<sup>11</sup>

In spite of the new police presence and the ongoing efforts of the fire marshals, arson continued to increase from 1975 through 1976. In 1976, then Deputy Mayor John Zuccoti wrote a lengthy memo to Mayor Beame outlining an overall anti-arson plan for New York City. It was the first time in the city's history that a high level non-enforcement City official had directly addressed the arson problem.<sup>12</sup> The plan suggested that a suppression tactic, or flooding an area with a visible law enforcement presence, was the best way to reduce arson. Three suppression teams consisting of fire marshals were proposed, two to work in different areas of the Bronx and one to work in Brooklyn. Each team would consist of a) ten fire marshals to patrol areas of approximately 20 to 30 square blocks, b) six social workers who would train and organize local tenants and residents in arson prevention strategies, c) five housing inspectors who would inspect buildings in the area and issue violations, and d) five housing lawyers who would initiate proceedings against landlords whose buildings contained an inordinate number of violations.

The whole program would be coordinated and run by a unit working out of the Mayor's office. This unit would report to a group of high level city officials who would review the efforts and results of the program.

Mayor Beame reviewed the memo and then sent it to his Office of Management and Budget (OMB) for analysis.

Ten days later, OMB issued its report on the memo. It flatly stated that the city should not institute high visibility suppression tactics by fire marshals since there was no empirical evidence to prove that such a strategy would reduce arson. OMB suggested that the Fire Department instead train thousands of community volunteers who would patrol their neighborhoods with uniforms and portable radios. OMB's suggestions were never instituted; simultaneously, Zuccoti's plan was scrapped.<sup>13</sup>

The next bureaucratic effort to address the burgeoning arson problem came approximately one year later. On March 2, 1977, John O'Hagan, Commissioner of the New York City Fire Department, sent a lengthy memo to then Deputy Mayor for Criminal Justice, Nicholas Scopetta.<sup>14</sup> O'Hagan expected a very high rate of arson in the summer of 1977 and requested that the city institute a combination law enforcement and neighborhood preservation program to prepare for the increase. O'Hagan suggested that fire marshals and police investigators work together performing long-term investigations as well as doing other more covert (high surveillance) activities. He also called for greater involvement by New York City district attorneys. In addition, O'Hagan wrote, insurance companies should initiate a reward fund for people who contributed important information about arson fires. O'Hagan also felt that the city's junkyards should be closely monitored by law enforcement agencies. Many fires are set so that the Fire Department, in their extinguishing efforts,

will provide the firesetters with easy access to plumbing fixtures and brass and aluminum pipes. The pipes and fixtures can then be sold to the city's junkyards. O'Hagan thought that if he could identify and prosecute the junkyards which were buying most of these building fixtures, a large incentive for committing building stripping arson would potentially be eliminated.

The neighborhood preservation part of O'Hagan's program would immediately seal vacant buildings. Also, H.P.D. inspectors would inspect deteriorating buildings with an eye toward the city taking over the worst buildings from negligent landlords. For the city, the program would provide management and financial guidance to owners who did not want their buildings burned but who could not run them at a profit. O'Hagan, finally, proposed a program in which the city would train unemployed persons to be building superintendents since he thought that buildings with good supers rarely burned. These trained supers could be provided to landlords in the most deteriorated areas in the city. Increased demolition of buildings, welfare reform, and the use of community organizers to do arson education would also be employed.<sup>15</sup>

Like the Zuccoti memo, the O'Hagan memo elicited no official response. With the exception of residents of a few small and relatively powerless communities such as Bushwick, East New York, the South and West Bronx,

and the Lower East Side of Manhattan, arson was not a major concern in New York City. Mayor Beame was also gearing up for the elections to be held in November of 1977, and there were certainly more "popular" and politically effective avenues toward which financial and manpower resources could be directed.

What the mayor did not count on and what made Commissioner O'Hagan's proposal prophetic were the events which began in July 1977. An accident at Con Edison's Indian Point plant resulted in the loss of all electrical power to the city. The first couple of hours of the blackout seemed like a nostalgic replay of a previous blackout in 1966 that had lasted for several hours, and that had created a feeling of cohesion and camaraderie in the city. After only a couple of hours, it became painfully evident that the new blackout was to take on a completely different character. In what appeared to be a spontaneous outburst of frustration and alienation, the city's poorest neighborhoods erupted with outbreaks of looting and arson. Neighborhood stores, both white and minority owned, were broken into, ravaged and burned. Overall, there were approximately 1,050 arson fires and enough looting and vandalism to result in \$165 million in damages. The New York City Fire Department had its busiest night in years.<sup>16</sup>

Radio stations ran live reports on the looting and arson. The next day, newspapers and television shows

abounded with stories, photographs, and videotape of what was universally portrayed by the media as "senseless violence." Most New Yorkers were shocked and outraged. The New York City insurance industry, one of the most powerful private interest lobbies in the state, was especially displeased: they stood to lose millions of dollars in claims filed by thousands of stores throughout the city. Additionally, the incident projected to the rest of the country an image of New York City as a lawless urban center characterized by spontaneous outbursts of random violence. All of this took place during the heat of a closely contested mayoral primary campaign, damaging Abe Beame's image with New Yorkers as a tough, effective mayor and hurting his relationship with the insurance and business community.

The Mayor's Arson Task Force and the Arson  
Strike Force

Not surprisingly, only a few days after the blackout, Beame announced the creation of a special Mayor's Arson Task Force (MATF). The MATF was to consist of representatives from the Fire Department, Police Department, Human Resources Administration, the Department of Housing Preservation and Development, and a Special Advisor to the Mayor. The MATF was chaired by the City Personnel Commissioner. Both the Police and Fire Departments each contributed 50 arson investigators to the project. The investigators were to work in the city's three highest arson incidence areas: Bushwick,

Brownsville (both in Brooklyn), and the South Bronx. Their task was to establish a coordinated, high visibility anti-arson presence, in addition to investigating arsons in vacant and occupied residential buildings. The Task Force would also monitor buildings which had fallen into disrepair, undertake a broad anti-arson public education campaign, increase the demolition of vacant buildings and place certain junkyard dealers under surveillance.<sup>17</sup> Thus, one year after Deputy Mayor Zuccoti's memo and five months after Commissioner O'Hagan's memo, Mayor Beame instituted an anti-arson program which contained elements of both Zuccoti's and O'Hagan's prior proposals. Had it not been for the spectacle of the blackout combined with a tight Democratic primary race, however, the MATF or the idea for any anti-arson program would have died with a few discarded memoranda.

With the creation of the MATF, the city undertook its first interagency effort to combat arson. At first, there were regular meetings of the Task Force representatives. The police and fire marshals were out in force in their three target areas. The marshals even wore bright red baseball caps in their neighborhoods to boldly advertise their presence. But eventually, after a couple of months (in November, Abe Beame lost the Democratic primary), the regular meetings among the agency representatives began to disappear, along with the originally envisioned coordination. The police arson investigators and fire marshals were still in

their target areas but communications and coordination between them had ceased. Since there were no formal guidelines exactly outlining the role and jurisdiction of each agency, police and fire investigators went their separate ways. This was reflected in symbolic language. The fire marshals, after a few months, called their field operation the "Red Cap Program" as opposed to the police, who still referred to their operations as the Mayor's Arson Task Force, or MATF.

Along with this lessening of coordinator as originally envisioned in the MATF conception went a sharp increase in rivalry between the police and fire departments. Both police and fire investigators would respond to and investigate the same arsons. Occasionally, the two groups raced to see who could make the first arrest. Conversely, many arsons were completely overlooked by both agencies. At the same time, efforts made earlier by HPD to demolish vacant buildings were halted. Thus, with the defeat of Abe Beame in the September primary, what began as a coordinated multi-agency approach deteriorated into a loosely defined program in which the two main participants didn't even like one another.<sup>18</sup>

In retrospect, the breakdown of the original Task Force concept is not difficult to understand. The greatest problem lay in the nature of large bureaucracies, particularly as applied to the city's situation. The MATF involved four of the city's largest agencies (Police, Fire, Housing, and Human Resources), all of which have their own specific

mandates and "turfs." One of the tenets of Max Weber's theory of bureaucracy -- still the best explanation of the phenomenon written to date -- is that bureaucracies tend to be insular and concerned only with their prescribed goals and operational procedures.<sup>19</sup> Thus, when an issue like arson emerges, which seems to necessitate a multi-agency approach, two contradictory tendencies become apparent. On the one hand is the theoretical but simultaneously nebulous goal -- solving the problem, in this case arson. On the other hand are practical procedures for dealing with other agencies and sharing information. As Weber and Blau have made very clear, organizations are very protective and indeed derive great power from not sharing their information, whether it be with the public or with other bureaucracies. Therefore, any plan to build a cooperative venture among large city agencies which involves both the attainment of goals not expressly defined for each particular agency (included here would be the Housing and Human Resources agencies and even the Police Department, for which the elimination of arson was not an explicitly stated goal) and information sharing must be well planned, closely monitored and backed up by strong, consistent leadership. Everything, in other words, which the MATF was not.

Moreover, the two main participants in this project, the Police and Fire Departments, had an added dynamic which exacerbated the inherent difficulties of the

MATF. For years, the Fire Department had sole control over arson investigation in New York City. Arson had always been looked upon by all concerned parties, including the police, as within the Fire Department's jurisdiction. Except for occasional assistance from the Police, the Fire Department alone was responsible for the elimination of arson in New York City. Beginning in the 1970s, however, with more attention given to arson, the Fire Department came under increasing scrutiny from the media, the public and politicians. When the Police Department first became involved with arson investigation in 1975, Fire Department officials and especially those within the Division of Fire Investigation were particularly disturbed. They knew that they were not performing their job adequately. But Division of Fire Investigation administrators felt the answer was simply to give more resources, both financial and manpower. If it were not for this lack of resources, they claimed, they could do the job better than any other agency.<sup>20</sup>

The Fire Department's Division of Fire Investigation was in fact ill-equipped to handle arson. DFI's contention of lack of resources was completely legitimate. Instead of supplying these resources, however, the city administration under Mayor Beame elected to introduce police involvement gradually, beginning in 1974. This led to the formal establishment of the MATF, despite resentment against the police by fire marshals which had existed even prior to its formation. The fire marshals' resentment was directed toward

the Police Department, the Fire Department administration (for letting the city carry out plans for increased police involvement), and the Mayor for deciding upon police involvement. By the time MATF was officially created, the prevalent feeling of the marshals from the Division of Fire Investigation toward the police arson investigators from the Arson/Explosion Division was resentment and distrust. The formation of the MATF in their eyes symbolized the first institutionalized police involvement of police into what had historically been their mission. It was, for the fire marshals, simply an attempt by the Police Department to expand their turf into another area about which they had insufficient knowledge. Here were investigators who had never been firemen, knew almost nothing about the technical nature of fire, and who could not possibly be as motivated as someone who knew experientially the physical and human destruction that a fire could bring. Yet, here they were on the MATF with an equal role to that of the fire marshals. In just the space of a few years, the respect, autonomy, and high morale among the fire marshals began to dissipate.

The Beame administration was also the target of much of the marshals' resentment. The decision to have more of a police presence in arson investigation seemed purely political. They saw it as an attempt by the Mayor, his deputies, and city politicians to take the pressure off themselves. Arson was burning entire portions of the city

and politicians were beginning to feel pressure from their constituents to do something. Instead of throwing all their support behind the Fire Department, however, they believed the politicians had panicked -- scared that they would be accused of giving support to an agency which up to now had not been able to do the job. By the time MATF was created, then, the marshals were already predisposed against police involvement.<sup>21</sup>

The police investigators, on the other hand, did not have as emotional a reaction toward the marshals as the marshals did toward them. Yet, they generally did not respect the marshals' abilities as trained investigators. The police looked upon the marshals as firemen playing policemen. They did not have the same investigative training or experience as policemen and their "street smarts" were constantly being questioned by the police. The police opinion of the marshals was bolstered somewhat by similar feelings of the city's district attorneys toward the marshals. The district attorneys were used to working with police officers. They knew their hours, their bosses, their limitations, and the extent of their knowledge about criminal procedure and rules of evidence. Fire marshals were basically an unknown quantity to most of the city's district attorneys. In addition, they worked different hours than the police chart (a fireman's chart usually consisted of three consecutive days of 9, 10 and 15 hours and then 3 days off), and were consequently more difficult to get into court. Fire marshals, generally, were

not as familiar with criminal law as were the police, and, according to the district attorneys, not as adept at building criminal cases. This reinforced the police's self-conception of being superior criminal investigators for arson.

The end result was that, especially at the administrative level, the police and fire marshals had little respect for each other by the time the MATF was formed. Often their feelings were mutually contemptuous. Only a very powerful and persistent coordinating body could have succeeded in helping these two agencies work together at all, much less harmoniously. The MATF, even when the agency representatives were meeting regularly, was simply unable to control and monitor the two conflicting agencies.

This mutual lack of respect was reflected in the ways investigators from the two agencies interacted in the field. The police and fire marshals worked together in Bushwick, Brownsville, and the South Bronx, while the marshals were solely responsible for arson investigations in the rest of the city where there was no specialized police presence. Since they both operated in the same geographic areas, they would inevitably have to investigate the same cases. When this happened, there would rarely be any communication or sharing of intelligence information between the investigators; as already noted, there would frequently be an unspoken "race" to see which team of investigators could make the first arrest. Conversely, since the two agencies had such poor

communication between them, there would be arsons which would go completely uninvestigated by either agency.

This situation continued for months -- a Mayor's Arson Task Force with no supervision, coordinator or monitoring. In May 1978, the Fire Department issued an evaluation of their "Red Cap" program. The evaluation found that there was a significant decrease of arson as well as all fire activity in Bushwick and Brownsville. The report's conclusion was that the "Red Cap" concept was an unqualified success and that the marshals were solely responsible for this success.<sup>22</sup> Nowhere in the evaluation is mention made of the fifty police investigators who worked in the same areas, at the same time, as the fire marshals. The evaluation would give the reader the false impression that the police had no role and did no work in the areas under evaluation, an assumption which was fallacious. This evaluation perhaps best illustrates the contempt then felt by some Fire Department personnel toward the Arson/Explosion Police.<sup>23</sup>

Interviews with police, fire investigators and administrators who were involved in MATF reveal that not only did the "Red Cap" evaluation ignore the police presence but the investigators themselves maintained that only their agency operated in the Red Cap areas of Bushwick and Brownsville. The majority of fire marshals interviewed now say that they rarely saw or had contact with the arson/explosion police in the MATF areas. Likewise, the police claim that only occasionally did they see fire marshals in those areas;

it was the police, not the marshals, who were responsible for any success which might have resulted from the MATF.

It is difficult to reconcile these contradictory perceptions on the part of investigators. Members of each agency are adamant that they were in the targeted areas in force. Various memoranda and correspondence among the MATF agencies indicate that both agencies were indeed present in the MATF areas.<sup>24</sup> It seems that the institutional bias to which investigators from each agency were subject caused sufficient perceptual distortion to render the presence of the other virtually invisible, or at least ineffective.

From November 1977 onward, the MATF existed more on paper than in reality. In August of 1978, the city institutionalized the MATF concept by creating a city agency called the Arson Strike Force (ASF). The ASF was unique in that it was to have a six-member Board of Directors consisting of the Commissioners of the Fire and Police Departments, the Human Resources Administration, the Department of Housing Preservation & Development, the Deputy Mayor for Criminal Justice and a Special Representative from the Mayor's office. The ASF was given a general mandate of "coordinating New York City's anti-arson activities."<sup>25</sup>

Though the ASF was supposed to carry out a general mandate of coordinating and reducing the city's arson problem, there was no accompanying budget in the enabling legislation. Staffing for the new agency consequently had to be created by assignment of personnel in other agencies. Then-Deputy Mayor

for Criminal Justice Herbert Sturz assigned one of his staff to develop and, at least initially, to constitute the entirety of the ASF.<sup>26</sup> The author of this dissertation was the assistant to this staff member -- working at the ASF from 1978 until 1983. It was in this capacity that access was made available to investigators, city officials, and official memoranda upon which much of this chapter is based. There were two schools of thought in Sturz's office about the best approach the ASF should adopt in dealing with arson. One was that police and fire investigators be assigned to the ASF itself, making the agency into the City's one and only large anti-arson agency. The theory was that this would eliminate the historic bickering between the Police and Fire Departments. Another advantage of this approach was that all investigatory, research and policy formation powers would reside in a single agency with a narrow focus on the elimination of arson. The second school of thought was that the ASF should be a small administrative agency which would act as a coordinating body among the various agencies already involved in arson prevention and investigation. The ASF would not be given the investigative powers it would have under the first plan. Instead, it would work closely with the City agencies to develop a coordinated approach to combatting arson.

Sturz decided to subscribe to the latter theory. Its leading proponent, John Engel, associate counsel in

Sturz's office, was chosen to be the Coordinator of the ASF. Both Sturz and Engel were wary of creating another large city bureaucracy.<sup>27</sup> Engel, at first, concentrated energy on obtaining funding for the new agency. His efforts succeeded when the U.S. Law Enforcement Assistance Administration (LEAA) provided the ASF with enough funding for a small staff to be assembled. Once a few people were hired, the ASF initially undertook the development of a set of investigative guidelines. The guidelines were to address the problem of jurisdictional and communication conflict between Police and Fire Department arson investigators.<sup>28</sup>

After just a few weeks of assessing the problem, it became painfully apparent within the ASF that arson investigation in New York City was in an anarchic condition. Police (working in the Bronx and the Northern section of Brooklyn) and fire investigators were working on the same fires independently of one another; other suspicious fires were not even investigated. One obvious remedy for this situation was to place investigative responsibility within one agency. This would put an end to all jurisdictional disputes. Yet, this proposed solution was flawed for two reasons. First, no clear evidence existed as to which agency could best handle investigative responsibility. To get the necessary information, a large-scale research study would have to be designed by a member of the ASF staff to measure the efficiency and overall success of Fire Department versus Police Department investigators. Such a study would

have required financial, technical and manpower resources far beyond the capabilities of the Arson Strike Force.

Second, and even more important, was the logistics of undertaking a program once a decision was reached. In late 1978 and early 1979, when the ASF was studying the problem, there were 50 police arson investigators and 150 fire marshals in New York City. These 200 investigators were adequate manpower for investigating most suspicious fires in the city. Neither agency, however, had enough men to cover the entire city by itself. If a decision was made to give one agency complete responsibility, then that agency would have to make up the necessary additional manpower. For example, had the Police Department been assigned full responsibility, then another 150 police investigators would be needed. Had the Fire Department been assigned full responsibility, they would need another 50 investigators. However, both the Police Commissioner at the time, Robert McGuire, and Fire Commissioner August Beekman indicated their unwillingness to hire the additional men each agency would require. The only other alternative was to transfer the necessary investigators or job lines from one agency to another. If the Police Department was assigned full responsibility for arson investigation, then 150 fire marshals would be transferred to the Police Department. The same would hold true in reverse. Each Commissioner vetoed this latter alternative: union leaders of the Fire or Police Departments would have also objected. The leaders would not

tolerate the loss or permanent transfer of a significant amount of members without huge resistance. These two factors made the immediate assignment of full responsibility to any one agency impossible.

An additional complicating factor was that regardless of which agency was assigned full investigative responsibility, the fire marshals would always be involved in the technical examination of the fire scene. The one aspect of arson investigation on which there was almost unanimous agreement was that the marshals were by far the most qualified to perform these technical examinations. The Police Department openly admitted that they did not have the expertise to perform this function. Thus, even if the Police Department had responsibility for investigating all arsons, the fire marshals would have to appear at each fire to perform the technical arson determination. Only if the Fire Department was given full investigative responsibility could one agency, the Police Department, be totally eliminated from arson investigation. And yet, as described earlier, a number of factors had already favored police involvement.

As a result, the ASF began to consider the idea of "split" responsibility for arson investigations. In some areas of the city, the fire marshals would perform the technical arson determination and then hand over the case to the police investigators for the follow-up criminal investigation. Since the number of police arson investigators was severely limited, the marshals would have responsibility

for the follow-up as well as the technical investigative phase in other areas of the city. The areas would be determined by the location of police or fire marshals' field headquarters.

A one-year pilot project was begun in the Bronx in 1978 to ascertain the viability of this split investigation system. Mario Merola, Bronx District Attorney, proposed that a group of fire marshals do only the technical examinations of suspicious fires in the Highbridge section of the Bronx. The cases would then be turned over to the police arson investigators for the follow-up. This project would be compared against another area of similar size in the Bronx where fire marshals performed the investigation from beginning to end. If it were found in a year's time that one form of investigation was clearly superior to the other, the ASF would recommend its implementation, hoping that bureaucratic restrictions might be overcome by considerations of efficiency.<sup>29</sup>

When plans for the project were announced, the fire marshals, especially Chief Fire Marshal George Malloy, denounced it as an attempt to slowly erode the power of the fire marshals. Malloy charged that the program's goal was to give the Police Department full investigative responsibility throughout the city. Additionally, the marshals claimed, the project was designed to take pressure off politicians and bureaucrats who refused to provide a massive but necessary

infusion of resources into the Division of Fire Investigation. The marshals did not believe that any "scientific," apolitical evaluation of the study would result; according to their view, the decision would be made to expand the project regardless of the results.<sup>30</sup>

The announcement of the project, named the Bronx Coordinated Arson Project (BCAP), had the effect of further reducing the morale of the fire marshals. It became evident, through interviews with many members of DFI, that the marshals generally thought they were getting a "bad rap" from the city's administration. They complained about lack of support from the Fire Department administration, which seemed to approve any and all ASF requests, and felt they were blamed for problems DFI could not control. They saw themselves near the end of an era in which fire marshals were effective and respected investigators. Repeated assurances by the Strike Force's coordinator that this was not the case fell mainly on deaf ears.<sup>31</sup>

Nonetheless, the project proceeded, sustained in large part by Beekman's efforts. Unlike previous fire commissioners, Beekman was anxious to reduce DFI's role. He thought that Fire Department resources should be focussed on firefighting, not on fire prevention or investigation. Additionally, Beekman did not like the idea of firemen who were also policemen. Were it true that the Police Department could best perform arson investigations, he believed

they should then be the responsible agency. Beekman's position put him in direct conflict with the fire marshals. On the other hand, it facilitated the rapid implementation of BCAP.<sup>32</sup>

After BCAP had been in operation for only a few months, the ASF was politically under pressure to issue a city-wide investigative policy before the results of BCAP were established. Brooklyn District Attorney Eugene Gold was encountering great difficulty working with fire marshals on a major case of arson in which six firemen had been killed. The case, which involved arson in a Waldbaum's supermarket, led to public charges and countercharges by both police and fire investigators about the other's incompetence. The marshals were even charged with falsifying evidence. Gold became involved, siding with the police, charging the fire marshals with incompetence and even threatening to investigate the manner in which they had conducted the investigation.

The case brought wide media coverage and increased the pressure on the Koch administration to take a stand on arson investigation in the city. In March of 1979, months before the evaluation of BCAP had even begun, Koch had Sturz's office direct the ASF to develop a set of investigative guidelines for arson in New York City. But lacking any empirical data on the best mode of structuring such a policy, the ASF could only solicit impressions from the various parties involved, namely, the district attorneys,

police and fire investigators.<sup>33</sup>

Not surprisingly, the administrators and investigators of the Police Arson/Explosion Division and the Fire Department's Division of Fire Investigation each claimed their particular agency did a better job. Each agency gave the by now familiar litany of reasons for its superiority. For the Police Department, the reasons included better investigative training, access to the Police Department's superior technical and manpower resources, and a greater knowledge of criminal law and procedures. The Fire Department's rationale included several beliefs: a higher motivation to solve arson since all marshals had been firemen, a greater technical knowledge of fire chemistry and patterns, and a sole dedication to arson investigation. They opposed themselves to the Police Department, which would automatically transfer investigators to a parade or guard detail whenever there was a major political event or celebration in the city. Neither agency could substantiate its position with convincing data, though each presented arguments with a sincere conviction that they were "correct."

The district attorneys were then thrust into the role of the tiebreaker. They were to be the impartial final consumer of the cases prepared by both police and fire investigators. It was the district attorney who had to assess and prosecute the cases delivered to them by either department.

When questioned, all five New York City district

attorneys were unanimous in their preference for police investigators. Several reasons were most frequently cited, reiterating tendencies which had developed over time. The police investigators had superior knowledge of criminal law and rules of evidence, their attitude in working with prosecutors was more cooperative, and the district attorneys preferred working with only one agency in investigating and prosecuting crime.

The fire marshals countered these opinions by alleging the ignorance of most prosecutors with regard to arson investigation and prosecution. The district attorneys, they said, were unwilling to learn from the fire marshals. Old personal antagonisms between only a few brash fire marshals and some district attorneys were stigmatizing all the fire marshals unnecessarily. At the same time, the district attorneys were unwilling to criticize the Police Department because of its power and the necessity of their working together on all other crimes.<sup>34</sup>

Despite DFI's vocal defense, it was the unanimous opinion of the district attorneys which convinced the ASF to expand the Police Department's jurisdiction in arson investigation. Consequently, in May 1979, the Arson Strike Force released new guidelines for arson investigations in New York City.<sup>35</sup> The guidelines expanded the BCAP concept -- the unprecedented introduction of police to investigate where the fire marshals' technical examination had left off -- to

all of the Bronx and the Northern half of Brooklyn. Fire marshals would be prohibited from conducting anything other than the technical fire examination in these areas. The Police Department would handle all follow-up investigations in these sections. This left southern Brooklyn, Manhattan, Queens, and Staten Island for the fire marshals to investigate. However, at the discretion of the Police Chief of Detectives, the Police Department could take over any case in the marshal's areas if it deemed the case to be particularly "unusual," as in a major church arson or an arson attracting extensive media coverage. This split resulted in the Police and Fire Department each being responsible for the investigation of approximately half the arson incidents in the city with the proviso that even in fire marshal areas, the police could investigate cases. As the marshals had predicted, the city had made a decision which greatly reduced the role of the fire marshals without ever evaluating the BCAP experiment upon which the guidelines were to have been based.

Morale at DFI plummeted still further. Many marshals felt that they had been stripped of their functions by a group of ignorant bureaucrats and conniving politicians. Hostility toward the ASF, the Police Department, and even the Fire Department for allowing this to happen, sharply increased. The decision had been reached, however, and in May 1979, the new system went into effect.<sup>36</sup>

In January 1980, approximately six months later,

the BCAP evaluation was completed. It found that there was no statistical difference in terms of arson arrest and conviction rates between the BCAP area and the control area where fire marshals performed every phase of investigation. Additionally, it found that communication between police and fire investigators had worsened in the BCAP area. At a meeting of the Arson Strike Force Board, it was decided that the evaluation would not be made public nor would its results have any bearing on the newly instituted guidelines.<sup>37</sup>

#### Conclusion and Analysis

During the years when arson was ravaging huge sections of New York City, the fire marshals had demanded more men and equipment to investigate the rapidly increasing problem. Except for miniscule bits of funding, neither the Fire Department nor the central City administration paid much attention to cries for help. A series of memoranda from high ranking city officials to the Mayor outlining the severity of the arson problem and strategies to deal with it were also totally disregarded. Finally, New York City's local press was ignorant or silent about this destructive phenomenon which was completely levelling entire portions of the city.

It was not until July 1977, when mass rioting and arson broke out in several neighborhoods, that the high media visibility of "blackout" rioting and arson brough immediate attention to the city's arson problem. The

newspaper and television coverage awakened city residents and politicians to the devastating effects of arson. In a short period of time, television and print reporters had succeeded in doing what an entire division of the Fire Department, Fire Commissioners and Deputy Mayors were not able to do for years -- focus attention on arson in New York City.

As in the case of the 1973 Attica riots, it took a violent outburst to bring political attention to a problem which was all too well known to politicians and officials. Penologists, legislators, criminologists and Department of Corrections personnel knew all too well that the New York State prison system badly needed attention. But, analogous with the arson situation, it took more than government officials calling attention to the problem for it to get addressed officially. It is the highly visible, usually violent "event" which is the catalyst in bringing about the necessary political pressure precipitating official action.

Public and journalistic outrage at widespread arson in an election year forced city politicians, particularly Mayor Beame, to take immediate steps. There is every reason to believe that, if the rioting had not occurred, official reaction to arson would have come much later, if at all. It is not surprising, then, that the city's reaction to rioting and arson was as unplanned and spontaneous as the riots themselves. Almost immediately following the riots, the

city formulated an emergency anti-arson policy. Bits and pieces of previously discarded proposed strategies were retrieved, put together and labelled as the Mayor's Arson Task Force. The head of the Department of Personnel was named the Task Force's Coordinator and was given the responsibility of forming and monitoring MATF's operations. The Mayor's office distributed a press release detailing the formation of MATF which was printed almost verbatim by the three daily city newspapers.

Also like the rioting to which it responded, the city administration's plans to deal with arson were made swiftly and with little thought or foresight. This almost instinctive bureaucratic response was quite rational, given the nature of politics and governmental problem solving, especially in an election year. The rioting produced an immediate political threat to the Mayor and his deputies. The type of response which would have involved an in-depth analysis of the arson problem, and the formulation of long-range anti-arson strategies, would have required a significant amount of time. However, this type of time consuming response would have been tantamount to political suicide for the Mayor (who, ironically, was defeated in the primary nonetheless). The politically expedient response dictates just the opposite of in-depth analysis -- a drastic, usually ill-thought-out policy which conveys the impression of a quick thinking "man of action."

The immediate formation of MATF is but one of

numerous illustrative examples of the consequences of a political system which rewards a drastic and immediate response. This same pattern can also be seen, though to a somewhat lesser extent, in the way in which the police initially became involved with arson investigations. The Fraunces Tavern bombing and subsequent fire took the lives of several people, attracting local and national media coverage. Part of the city administration's immediate strategy was to increase the size of the Police Department's Bomb Squad and to add a specialized arson unit as part of the Bomb Squad. Because terrorist bombings and arsons posed a real threat to the city, the city's administration decided that it was mandatory to have more police officers to investigate these crimes. There was, however, no thought given as to how to coordinate this Unit's activities with those of the fire marshals, how their jobs would complement or supplement the fire marshals, and whether a decision like this might possibly result in a counterproductive rivalry between the two agencies. Like the formation of MATF, the decision to make the Police Department responsible for investigating arsons was one which was spontaneous; its implications were not fully considered. As it turned out, the new police responsibility did create large-scale hostility on the part of the marshals (which was returned by the police). No coordination existed between the two agencies' efforts. Nonetheless, incidents such as the Fraunces Tavern bombing,

the Bronx social club fire, the nationally televised arsons on the World Series broadcast, the blackout riots, and the Waldbaum supermarket fire in which seven firemen were killed, did serve a useful function. These are the types of dramatic incidents that shock the public and policymakers into action. Stories about the incidence of arson increasing or what it can do to neighborhoods had never been enough to get some drastic official response to the problem. Within the space of three years, the consideration of all the above events did what periodic memos from one official to another, an occasional news story, or an academic monograph could never do. It inspired a governmental response.

The creation of MATF, then, was born out of the same circumstances as was the creation of an arson unit in the Police Department. Ironically, MATF was charged with repairing some of the damage which resulted from the decision to have the Police Department involved in arson investigation.<sup>38</sup>

By the time MATF was created, the involvement of the Police Department and its conflict with the Fire Department had evolved to the point where the voluntary withdrawal of one agency from arson investigation would be almost impossible, even if city administrators believed withdrawal to be the best course of action. As Weber discussed in his theory of bureaucracy, bureaucracies are insular and extremely protective of what they consider to be their territorial rights. The natural tendency is for bureaucracies to expand

their jurisdiction and size in a continuing effort to justify their existence. MATF had an almost impossible task: to coordinate the activities of two powerful agencies (in addition to other agencies), neither of which was willing to reduce its own involvement or to work closely with the other. Without a clearly defined role, an interested and politically powerful leader, or an autonomous staff, none of which MATF possessed, little could be done to coordinate or control these powerful opposing forces.

MATF, consisting only of representatives of agencies which it was supposed to coordinate and headed by someone whose concerns lay elsewhere, was destined to fail. After a few organized meetings of MATF representatives, MATF dissolved soon after its creation.

The Arson Strike Force, created by City Council legislation and signed into existence by the Mayor, had somewhat more of a chance of successfully coordinating the city's arson efforts than did the MATF. Though the ASF was created without funding, it was headed by someone who was interested and resourceful enough to attract outside funding and to build a small staff. The primary goals of the ASF were to untangle the situation partially created and completely exacerbated by prior political decisions and bureaucratic responses. The response to the city's arson problem had been almost purely political and the subsequent bureaucratic involvement had only complicated matters. Thus, it became apparent that some central "independent" group was

needed to coordinate the disparate and sometimes conflicting bureaucracies.

The ASF was better off from the start than the MATF. It was created by local City Council legislation. After a few years, it had its own staff and a coordinator who was not tied to any of the other agencies on the ASF's Board of Directors. The ASF, however, was always in a very tenuous position. After it issued a plan to split the investigative jurisdiction between the police and fire marshals in 1979, the ASF proposed in 1980 a plan to pair a detective and a fire marshal together to investigate arsons. This plan was called "team policing" and would institutionally combine the resources and manpower of the Fire Department's Division of Fire Investigation and the Police Department's Arson and Explosion Division. The Arson Strike Force considered the institution of team policing a crucial and necessary strategy for effectively dealing with arson. The fact that both agencies had had dual jurisdiction over arson, the different yet complementary expertise among the respective investigators, the importance of eliminating the bureaucratic and personal rivalries between the agencies, and the need for one uniform method of arson investigation throughout the city were all reasons which caused the ASF, over a period of several years, to strongly push for the institution of team policing as one of its main priorities. (See Appendix B, Arson Strike Force report on the advantages of team policing.)

The fire marshals, however, after hearing of the proposal of team policing, began a behind-the-scenes campaign to discredit and eliminate funding for the ASF (as well as to spread the word about the incompetence of arson detectives). As in the past, fire marshals again perceived this ASF proposal to create a "team policing" plan as another step toward their own demise. Additionally, the thought of being paired with a detective was quite painful for many of the fire marshals. The fire marshals began to contact City Council members, community groups, politicians, and newspapers to convince them that this plan was unworkable, that detectives would be harmful to arson investigations, and that generally the ASF should be disbanded.

Consequently, Fire Department officials at all levels were adamantly opposed to this plan. They felt that a large piece of turf would be lost if team policing went into effect. High officials, including even the Commissioner, had been convinced by the marshals' arguments that the plan was unworkable. During this period, the Fire Department cut off all contact with the ASF, refused to provide it with data, and took every opportunity to criticize the agency to various city officials as well as to condemn it at public hearings and community meetings. But finally, in March 1983, the Mayor ordered the Fire Department to follow the ASF's plan. This "victory" for the ASF was achieved only because of the plan's strong backing by the Police Department and the City's

Criminal Justice Coordinator's Office. The incident, however, illustrates the precarious position of a small organization whose task it is to redistribute bureaucratic turf.<sup>39</sup>

At various times during its short history, the ASF also alienated the Fire Department, the Department of Housing Preservation and Development, and the Mayor's Office by undertaking a study of the relationship between arson and housing assistance programs. The reasons for this antagonism are not hard to explain. The first results of the study showed high correlation between some city housing loan and tax abatement programs and arson. These findings directly contradict established city housing policy and did not increase the popularity of the ASF within the Mayor's Office or within HPD. It remains to be seen how long a small bureaucracy such as the ASF can survive when by the very nature of its mandate it will inevitably make enemies of the bureaucracies it is designed to coordinate.

The historic feud between the Fire and Police Departments as well as that between the ASF and other City agencies can be seen as examples of how the notion of law enforcement-related agencies as "autonomous" institutions of social control must be modified if it is to reflect actual social realities. Quinney's theory that law enforcement agencies independently determine and enforce the social reality of crime must be recast in terms of Weber's notion of bureaucracy. Though the stated goal of the Fire and

Police Departments is the investigation, identification and apprehension of people for arson, the realization of this end is tempered by the bureaucratic tendency to be protective of turf. In other words, when confronted with the possibility of losing bureaucratic responsibility, agencies of social control will not be willing to abdicate power even at the cost of compromising the law enforcement effectiveness of the state as a whole. This conflict has the latent result of creating an environment in which crime can occur more easily.

Though this feud between the agencies was certainly not the cause of the extent of the city's arson problem, it did impede strategies (which could only have been designed by people outside the affected bureaucracies) which might have dealt more successfully with the problem. Ironically, the same agencies which are charged by the state with the task of administering policies of social control have also limited the state's actual efficacy in realizing its stated goals.

Chapter 4.

Footnotes

1

In this regard, the fire marshals have a great advantage over police officers who do not have the power to issue an administrative subpoena.

2

New York State Criminal Procedure Law, Section 1.20.

3

New York City Arson Strike Force.

4

See the discussion of the logistics of suspicious fires in Chapter 2.

5

This bureaucratic decision turned out to have major ramifications in terms of the identification of arson in New York City.

6

As new firemen (and women) come into the Department, this antagonism will begin to fade. As older battalion chiefs retire and are replaced by younger men who never knew the marshals to perform this function, this attitude will begin to change.

7

A look at the New York Times Index from 1968-1976 shows that the number of stories about arson (not particular fires which were labelled arson) were extremely rare.

8

F.C. Shapiro, "Raking the Ashes of the Epidemic of Flame; Bronx, New York," The New York Times, 13 July 1975, pp. 14-16.

9

New York City Arson Strike Force.

10

New York City Police Department, Office of Management Analysis, Statistical Report: Complaints and Arrests, 1970-1980.

11

This report was written in August 1974.

12

Memo from John E. Zuccotti to Mayor Abraham Beame,

September 7, 1976.

13

Office of Management and Budget, Evaluation of the Fire Department's Program for Combatting Arson in the City of New York, September 17, 1976.

14

Memo to Nicholas Scopetta from John O'Hagan, March 2, 1977.

15

There was no indication whether O'Hagan had the support of the commissioners from other city agencies which he included in his memorandum.

16

Business Week, August 4, 1977.

17

The creation of this task force was announced on August 3, 1977.

18

Memo to Deputy Mayor Herb Sturz from Gary Churgin and John Engel, July 25, 1978; letter to Deputy Mayor Herb Sturz from Blanche Bernstein, May 19, 1978; letter to Deputy Mayor Herb Sturz from Robert McGuire, June 2, 1978.

19

Max Weber, From Max Weber: Essays in Sociology, translated and edited by H.H. Gerth and C. Wright Mills (New York: Oxford University Press, 1946).

20

From numerous interviews during the period during 1979-1981 with Chief Fire Marshal George Malloy and Intelligence Unit Head Cecil Maloney.

21

Interviews with DFI fire marshals, 1979-1983.

22

New York City Fire Department, Fact Book, 1982.

23

The fire marshals' contempt for Police Department arson detectives as well as for the entire Police Department was probably at its zenith during this period.

24

Letter to Herb Sturz from Robert McGuire, June 2, 1978; letter to Tom Roche from Nick Borg, August 11, 1977.

25

Local Law 372, passed by the City Council August 15, 1978.

26

The staff members were John Engel and Michael Jacobson. Because I was an original staff member of the ASF, I was able to obtain the interviews and access to much of the data contained in this dissertation.

27

Memo to Herb Sturz from Gary Churgin and John Engel, August 24, 1978.

28

New York City Strike Force Investigative Guidelines were released in May 1979.

29

The proposal was made in a memo to Herb Sturz from John Engel and Gary Churgin, March 31, 1978.

30

Numerous interviews with Chief Fire Marshal George Malloy and Intelligence Unit Head Cecil Maloney.

31

John Engel had made it a point to expressly assure the fire marshals that the Strike Force had no predetermined notions of which agency better handled arson investigations.

32

Interviews with Augustus Beekman, May-July, 1978.

33

I was personally responsible for interviewing of all of these parties.

34

This point has perhaps more validity than all the others. Very few public officials or agency heads are willing to publicly criticize the Police Department.

35

New York City Arson Strike Force, Investigative Guidelines, May 1979.

36

In fact, many administrators and fire marshals in DFI refused to talk to both John Engel and myself for months afterward.

37

Arson Strike Force Board Meeting, January 12, 1980.

38

I am just asserting that the entry of another competitive bureaucracy into the city's anti-arson efforts was problematic.

39

Numerous high level officials were lobbied at length by the fire marshals in order to disband the Strike Force.

CHAPTER 5. THE ROLE OF THE INSURANCE INDUSTRY

In addition to difficulties posed by the various bureaucracies dealing with the inherently complex character of arson as a crime, another institutional source of the problem is the insurance industry. This chapter will examine the role it plays in the processes leading to arson generally, but especially leading to arson for profit. Policies followed by the industry tend to encourage arsons by landlord for economic gain.

The simplest and most common form of arson for profit occurs when the owner of an unprofitable building in a declining area "sells" his building to an insurance company by burning it down. Such a sale represents the logical conclusion of the strategy of maximum income exploitation popularly known as "milking." A landlord forsakes long term investment in an area he views to be in decline. He charges maximum possible rents while limiting building service and maintenance to the barest minimum. In this manner, the greatest possible profit is squeezed out of a dying structure.<sup>1</sup> Another popular technique of profiting through arson occurs in neighborhoods where property values are increasing. An owner lacking the capital to renovate his structure, who has tenants in rent controlled apartments, or finding himself with a commercial structure in an emerging residential community, often decides the best

economic solution involves arson. Rehabilitation by fire may allow the landlord, depending on his needs, to acquire capital and permanently remove low-paying tenants. He may even be able to change the zoned use of his building.

The destruction of housing stock from arson for profit is far more significant to a marginal neighborhood than simply the combined number of incidents. The very repetition of these arsons for profit can cause a marginal area to rapidly decline.

What New York City fire marshals term the "Good Christian" method is yet another way to collect insurance proceeds. In high arson areas, the likelihood that a building will suffer a fire is increased by the reduction of the maintenance level provided for the building. If, for instance, heating and electrical systems are not maintained, the possibility of fire increases greatly. If entrances to the building doors, windows, and fire escapes are not kept secure, arsonists and other criminals and vandals have easy access to the building. Second, tenants infuriated by lack of services may seek revenge by burning the building. The landlord who knows this need not hesitate to exploit it, since no criminal intent on his part can be proven.

Given these and other methods of arson for insurance fraud, the relationship between insurance companies that underwrite fire insurance in the City and arson for profit must be examined. This chapter will discuss the nature of the

insurance industry in terms of its economic structure, its profitability and how, if at all, industry policies either manifestly or latently contribute to arson for profit.

There are four divisions of the insurance market, all involved in writing fire insurance in New York City.

They are:

1. The Voluntary Market. This is the mainstream of the insurance industry: companies registered within the state and subject to all state insurance regulations. They are allowed to write almost all risks they desire, but generally shy away from what are considered high-risk situations. They write the vast majority of fire insurance statewide, but are disproportionately less well represented in arson-prone areas of New York City.

2. The Excess and Surplus Line Market. Also known as the non-admitted market or the supplementary market, these are private companies based out of state (often out of the United States) and not registered within the state. They are restricted to underwriting certain types of insurance and only those risks rejected by the voluntary market (although this is not always the case). They represent at least 3 to 5% of fire insurance in the state, although the figure may actually be much higher. Their presence is concentrated in high-risk areas, particularly in New York City.

3. The Residual Market. In 1968, Congress established

F.A.I.R. (Fair Access to Insurance Requirements) plans in each of the 50 states. These were high-risk pools, subsidized both by the industry and the government to guarantee the availability of insurance in poor and riot-torn inner city areas, though at a higher price than in the voluntary market. Today's New York State Residual Carrier, the New York Property Insurance Underwriter's Association (N.Y.P.I.U.A.), is the descendant of this F.A.I.R. plan, handling what voluntary carriers classify uninsurable. (The grounds on which it can reject a risk, however, have recently been expanded.) N.Y.P.I.U.A. is the second largest property insurer in the city, covering approximately 60,000 buildings. It provides only certain types of insurance and is subsidized by the rest of the industry with whom it does not compete. It has policies on many of the highest risk buildings and is active in the highest risk areas. It has become, of necessity, a leader in the industry's fight against arson.

4. Reinsurers. Reinsurers write insurance on insurance. They do not deal with property owners directly but rather provide coverage to primary insurance companies on all or part of a risk, servicing all of the above types of companies. While they do not handle fire claims directly, they have a great though indirect influence on prices and underwriting philosophy in the primary market. Further, in many cases, reinsurers may be writing fire insurance through a company (most often a non-admitted company) that may in fact hold little or no risk or even through a "company" that is merely

a shell. This procedure, known as "fronting," blurs lines between primary and "reinsurers" and has brought the latter more directly into underwriting. Reinsurance is almost completely unregulated and is increasingly carried out on an international basis.

Each of these markets has its own economics and dynamics and will be dealt with separately. Each has an important effect on the rest and risks are frequently shifted from one sector of the market to another.

#### Underwriting and Claims Practices and Profitability

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The nature of the insurance industry is usually misunderstood even by professionals involved in fighting arson. The most common misunderstanding is that insurance companies make their profit on the insurance side of the business -- that is to say, on underwriting. In fact, modern insurance companies often spend more on claims and operating expenses than they earn from premiums. Premium dollars merely provide the capital for investments on which the insurance company profits are made. As a Forbes Magazine article recently described, "An insurance company hopes that premiums and claims will about balance out and that the interest and dividends earned on its reserves will produce a profit. While the industry uses elaborate rate setting formulas to try to set rates at levels that provide a slight profit margin on the underwriting business, it generally does not work out that way."

In fact, in today's highly competitive capital market,

most premium rates are discounted to the point where the best underwriting profits are negligible, and most companies actually lose money on the underwriting side of the business.

During the first six months of 1981, operating expenses and claims paid exceeded premiums by an average of 3.5% industry wide.<sup>2</sup> However, it is possible to sustain much higher underwriting loss and remain profitable. During the same period, Aetna Life and Casualty was reported to have lost 14% on underwriting. Yet, the company still turned a handsome profit thanks to successful investments in high technology, real estate, and satellite data transmission as well as to high interest rates.<sup>3</sup>

Thus, the key to making money in insurance is clearly not profitable underwriting. Rather, companies concentrate on keeping underwriting losses reasonably low and predictable, while keeping investment income high. In terms of how arson may affect this profitability, a sudden and unpredicted explosion of fire losses causing insurance companies to remove capital from the investment market or interfering with investment strategies represents a serious problem for insurance companies. More common are predictable fire losses, even if they significantly exceed premium dollars. They are also less detrimental to the insurer, provided, of course, that the income made from investing premium dollars exceeds the amount lost on underwriting. A certain level of fire losses may even be essential since it motivates people to buy

fire insurance.

Investigators and observers of arson-prone areas often wonder why bad risks are insured at all, or why a risk may be considered uninsurable and dropped into the residual market (N.Y.P.I.U.A.) only to be picked up by an insurer, and later dropped again, all with little change in the building in question. The problem here is that what is insurable is an elastic concept. What is plainly an unacceptable risk when investments are yielding 8% may be acceptable when investments can earn 25%. Investment climate and interest rates play as much of a role in determining what is or is not profitable to insure as does the nature of the risk. At a time of soaring interest rates, the need for capital to invest may help redefine what constitutes acceptable risks. Thus, in recent years, standard insurers have begun to take on risks once handled only by high-risk oriented excess and surplus line companies. These, in turn, have cut prices even further and are now scrambling for new customers at even higher levels of risk including those once suitable only for high-risk pools such as F.A.I.R. plans.<sup>4</sup>

Fire insurance is a game of constantly changing averages and relativity. Predictability and percentages hold the key. In theory, no property is absolutely uninsurable, unless it could be positively guaranteed to burn. In practice, of course, properties are and have been deemed 'uninsurable' simply by such unfair criteria as location or the race of the owners or tenants. But, while conservative insurers still

tend to shun much inner city property or fire/casualty business, the need for investment capital virtually guarantees that at some rate of investment profit and at some premium level, some insurer will find almost any risk insurable. This is one reason why, in a climate of high interest rates, the potential owner/ arsonist has so little trouble insuring his building.

This is not to say that an insurer will knowingly take on a risk he feels is likely to burn. The point is merely to assert that what are acceptable odds that a building will not burn vary according to economic and money market factors as well as with the condition of the building. The insurer makes the decision about whether a building is insurable based on class rates and actuarial tables. Generally, the key factors are not inspections or conversations with residents, community groups, firemen and police.

Insurance textbooks maintain that insurance is not available to extremely high risks, due to the economic principle of adverse selection. According to this principle, as levels of risk rise, prices rise to the point that only those expecting a loss can afford insurance. The insurer assumes the insured has more knowledge about the condition of the structure than does the insurer. In sum, the insurance company simply does not trust anyone buying insurance at such high prices. Without reasonable ability to trust, the insurer will not do business.<sup>5</sup>

Adverse selection has not worked in the inner city fire insurance market for a number of reasons. First, adverse

selection presumes that the insured has the freedom not to buy.<sup>6</sup> While some inner city risks go without insurance, it is most impractical. For the inner city property owner, fire insurance is a necessity if he wishes to maintain, and certainly to invest in, his building.

Secondly, two industry policies undermine the working of adverse selection. For one thing, the presence of the F.A.I.R. Plans or residual markets, subsidized by industry and government, guarantees that insurance be available as a right. The costs of electing to do without insurance (that is to say, neighborhood disinvestment) has been judged by Congress to be more detrimental than the cost of guaranteeing the availability of insurance even to bad risks.

In fact, the residual market as a high risk pool reverses the normal process of adverse selection. Until recent years when the law allowed N.Y.P. greater latitude in cancelling policies, the adverse selection process raised residual market rates to levels that many insured found unacceptable. But rather than drying up the availability of insurance, the nature of the residual market continued to guarantee insurance to those who were willing to pay (presumably also making insurance available to potential arsonists), while forcing those not anticipating fires to do without insurance or deal with the excess and surplus lines.<sup>7</sup>

The presence of the excess and surplus market also works against adverse selection within the competitive market. Obviously, at some point, it becomes unprofitable for non-admitted

companies to do business but, as is discussed below, this is at a far higher loss ratio than it is for the admitted market. There is, then, no clear level of risk where the availability of insurance dries up. Non-admitted companies are responding to different supply and demand dynamics and sometimes to overseas economic situations. Even within the admitted market, the point of adverse selection varies with cash flow needs and investment profits. Hence, a variety of factors having little or nothing to do with the nature of the risk will influence adverse selection.

Further, even extremely bad risks may obtain insurance by being packaged with the not-so-bad. An owner may present an agent or broker with 10 good risks, on the condition that he also find insurance for one or two bad ones. The broker or agent may then spread his bad risks among several companies with which he does business. An insurance company may also buy a block directly from a customer, figuring that the investment yield on the premiums from the good risks make the bad risks acceptable. In some cases, such package deals catch brokers and insurers unaware. A good customer, who has long held homeowners or life insurance policies, may ask his agent or company also to insure his business. Such a risk may be outside the usual sort of business done by the insurer, yet may be accepted on faith with little scrutiny. This sort of arrangement may account for the surprising presence of otherwise conservative voluntary market carrier in areas generally served by the residual market or excess and surplus lines. All of

these arrangements are likely to be reinsured, that is to say, the risk or a portion of it will be passed on to another company. The reinsurer is a wholesaler who buys huge blocks of risk often with little knowledge of individual risks that comprise that package. Wittingly or unwittingly, the insurer who takes on a risk with which he is later unhappy can easily pass it along, if it is packaged with more desirable risks.

### The Role of Agents and Brokers

Most insurance is not sold directly by insurance companies but rather through a retailer of some sort. There are four distinct types of insurance retailers, with varying degrees of independence.

1. Brokers. A broker is an independent businessman who intercedes between an insured and insurance company. He does not represent any specific company and can tailor the customer's insurance needs to any company he sees fit, or even parcel out coverage among companies. Brokers and brokerage houses range in size from neighborhood-oriented businesses to international operations. Since they have the freedom to deal with any company, large, unusual or hard-to-place risks are generally placed through brokers. Some brokers, called excess/surplus line brokers, deal exclusively in the non-admitted market, while many deal in both admitted and non-admitted. The broker takes none of the insurance risks, but receives a commission on the premium.

2. Agents. An agent is an independent businessman. Unlike the broker, he is contractually bound to a number of

specific companies. Agents have binding authority for the companies they work with and are generally more involved in filing the policy than are brokers. They represent two or more companies, but usually less than ten.<sup>8</sup> In rural areas, agents predominate. In cities like New York, with so many insurance companies present, brokers tend to dominate. Since agents have binding authority, they can oblige a company to take a risk for a certain period (30 days in New York State) without the company's prior consent, which a broker requires. On the other hand, underwriters can exert some control over agents, who need their business more than does a broker who can go anywhere. Like brokers, they make their profits on commission.

3. Exclusive Agents. Far more rare in New York fire insurance are exclusive agents who write only for one company. Technically, they are still independent and make their profit on commission, not salary. However, their independence is nominal since they sell only one company's products.

4. Direct Writers. A few insurance companies do not sell insurance through agents or brokers, but rather through their own salesmen who are company employees earning a salary. Such companies have grown in recent years, writing increasing amounts of fire insurance. However, they still dominate in more standard high volume areas, such as auto insurance, and tend to shy away from more unusual risks. The best known of such companies are Allstate and GEICO (Government Employees Insurance Company).<sup>9</sup>

Most New York City fire insurance is sold through

agents and brokers. Whose relationship to the insurance companies is at times less than harmonious. Agents and brokers, after all, share none of the risk on a policy for which they take a commission. The only risk they take in writing losses is that the insurance company will drop them. This could be minimized if losses were spread out among a number of companies.

As independents, agents and brokers are hard to police. Anxious for business, it becomes difficult for companies to pressure their retailers. When a major underwriter was asked about required pre-inspection of buildings, he said:

We can't swim upstream against our agents on a thing like that. Personally I would love it. But if we require something our competitors do not, our agents will simply write policies for the other companies. Regulation must be mandated across the board. Nobody can afford to take the lead. Even where things are mandated, if the word gets around that a certain company is lax in its requirements, the agents will just write for him. The guy who gets the reputation for being lax will get all the business. 10

This should be a cue for all those writing anti-arson legislation. It suggests that anti-arson methods must be strictly enforced at the agency level to make sure that no one benefits from being lax about the law.

#### Claims, Settlements and Arson Investigations

Law enforcement and fire department officials frequently blame insurers for not following up arson investigations and for too quickly settling claims on suspicious cases. Often cited is the industry's willingness to pay claims as an undermining factor in arson investigations. Industry officials

counter that law enforcement is insensitive to the insurer's contractual obligations and further that law enforcement agencies investigate serious fires incompetently or incompletely, and when they do investigate, they do not share information with the insurance company. Beyond the bureaucratic backbiting and petty squabbling that these claims and counterclaims represent, there are real conflicts in the role of both parties.

Voluntary insurance carriers are pressured in a variety of ways to pay out quickly on a claim. The first or legal way is that under New York State Insurance Regulation No. 64, the Unfair Claims Settlement Practices regulation, companies are required to pay out promptly except under special circumstances. The second is contractual: the insurance company is obligated to pay promptly to the insured and may incur civil proceedings if it does not. The third, and most important, is competitive. In a survey of advertisements for insurance, it is striking how often fast payout is mentioned; the insurance industry prefers to compete over service rather than price. Advertisements emphasize speed of payment in helping the insured recoup his loss. Premium price is rarely mentioned. Many insurers believe they will lose business if they get the reputation for slow payment, or for pressing those who have suffered losses.

For their part, law enforcement officials are under pressure to obtain criminal convictions. To obtain such convictions for arson or insurance fraud requires proof beyond a reasonable

doubt, keeping arson conviction rates consistently low. On the other hand, a preponderance of evidence is required for an insurance company to deny payment in a civil proceeding. For several reasons, therefore, insurance companies are reluctant to take too many cases to court.

For one thing, the vast majority of policies in high arson areas carry relatively low amounts of protection. Total loss claims do not often exceed about \$30,000, according to most industry spokesmen. Thus, even when many such claims occur simultaneously, the cumulative effect on a company's reserves is minimal. On the other hand, that ultimate industry deterrent, denial of payment, can get very expensive. Indeed, quite often, the action of denying payment is more expensive than the claim itself. Each denial of payment exposes the company to litigation in which court costs are accumulated for both insured and insurer. More important, for the duration of the dispute, an escrow account is required in an amount equal to the maximum possible proceeds, tying up large sums of money otherwise profitably invested.

In practical terms, this means that small policies (virtually all of those located in high arson areas) for which even a total loss settlement costs less than \$30,000, will probably receive a quick, no-questions-asked adjustment. Of course, this is precisely the goal of the profit-motivated arsonist.

This does not necessarily mean that an insurance company will not contest a particular case, even one which

costs money in the short run. As one high ranking industry official said, "I don't mind going to court on principle. If we beat a guy, it sets a good precedent; word gets around."<sup>11</sup> However, he went on to note that going to court "on principle" is only sensible when the insurer is very certain of winning. If a company loses a court case to an alleged arsonist, word also "gets around." It is doubtful that a company can afford to go to court regularly to set an example. In short, if the outcome is unknown, the logic of the market will dictate a relatively inexpensive, quiet out-of-court settlement.

Hence, adjudication is often avoided for the non-financial reason of fear. An anti-arson effort relying on the decision of a judge or jury is seen as risky. Juries are felt to be biased in favor of the individual, especially when faced with a huge, wealthy entity like an insurance company.

While several members of the industry agree with law enforcement officials that criminal conviction for arson is the best possible deterrent, they complain that city agencies do not provide the industry with sufficient information to prosecute successful criminal or civil proceedings.<sup>12</sup> One claims manager said that, in his experience, the fire marshals' office does not pursue many so-called suspicious fires even when informed of their nature by an adjuster. Another industry member felt that arson is given too low a priority by the district attorneys, and that most prosecutors resist bringing cases on a no-win type of crime like arson.<sup>13</sup>

City officials interviewed had another impression. While they, too, felt that there was insufficient cooperation between them and the industry, most laid the blame on the industry. Several cited figures indicating that the industry failed to comply with the legally required methods of communication, much less providing information on a voluntary basis.<sup>14</sup>

The Residual Carrier in the  
Fire Insurance Market

The inner city riots that took place in the summers of 1967 and 1968 cost the insurance industry 75 and 68 million dollars, respectively.<sup>15</sup> Although these sums did not amount to an industry-wide disaster (Hurricane Betsy in 1965 cost the industry \$715 million in losses),<sup>16</sup> they were substantial. Even more alarming was the time frame in which the losses occurred. In a sense, each riot was a miniature hurricane requiring the expenditure of a significant amount of capital in a short period of time. Yet, in contrast to cases of natural disaster, experts felt that the industry could take preventive steps. Convinced that riots were a permanent feature of city life, insurers began a program of mass cancellations and coverage denials in affected areas. The industry, in effect, began to flee from areas in which the disturbance was taking place. Redlining, identifying an area of risk in which the underwriting was taboo on a map with a large red circle, became commonplace. In 1967 and 1968, such areas were quickly becoming "no man's lands" for the insurance industry and later for private business. Statistics provided by the President's National Advisory Panel on Insurance in Riot-Affected Areas

showed that over 40% of the homeowners had serious problems buying property insurance in affected areas.<sup>17</sup> This led to the creation in 1967 of the Urban Areas plan, foreshadowing the FAIR plan which later prevented insurers from cancelling a policy of denying coverage without first inspecting the property.

Now unable to avoid losses by refusal to write risky insurance, the industry chose another path. A loss pool to insure high risk areas was set up with funds furnished by the individual carriers. This gave rise to the Fair Access to Insurance Requirements (FAIR) Plan. This was, from an insurer's perspective, the answer to urban crises. The loss pool charged higher prices but provided coverage to all. At the same time, it ensured that no one company would become insolvent when flooded with riot-related claims. FAIR plans are localized within participating states, backed by federal government riot reinsurance, and funded by all the licensed carriers in the state (317 in New York as of 1984) in portions equal to the firm's share of the state insurance market. The New York FAIR plan is known as the New York Property Insurance Underwriters Association (N.Y.P.I.U.A.). Since 1979, the State of New York has also been contributing to the loss pool with annual subsidies of 15 million dollars.

At first, the New York FAIR plan set rates according to a system of "self-regulation," rates conformed to the FAIR plan's own loss experience, not to the total losses of all the carriers in the state. Because the rest of the state had

been experiencing far fewer losses and paying far lower rates, the originators of FAIR felt it financially unwise as well as unjust, to expect policyholders outside the plan to subsidize those inside the residual market. Thus resulted a strange perversion of the principle of "adverse selection." Self-regulated rates became increasingly expensive. Many could not afford insurance as self-regulated rates increased in price. Those who saw themselves as safer risks chose no insurance. As the "better" risks left the market, the self-regulated rates went even higher (based on the averages of an increasingly "poor" risk pool) and even fewer buyers could afford insurance. However, rather than drying up available insurance, the mandatory nature of the plan kept insurance available -- to those who could afford it. Obviously, no insurance rate is too high for those anticipating a loss, and by the mid-70s cynics were noting that only those planning a fire could afford the FAIR plan.<sup>18</sup> In 1978, Congresswoman Elizabeth Holtzman sponsored a successful bill, now known as the Holtzman Amendment, which, depending on the particular policy itself, set a ceiling on FAIR plan rates of 20 to 40% above those set for the voluntary market by the New York State's rate setting body, the Insurance Services Office.

New York Property is the insurance industry's arson expert. Because they had to cover the very worst risks, the so-called residual market, New York Property responded with innovative underwriting and claims techniques which have made them far and away the leader in the fight against arson and

insurance fraud.<sup>19</sup> For example, New York Property (N.Y.P.) inspects a premise before insuring it. They perform monthly inspections of almost every building it insures. In addition, N.Y.P.I.U.A. regularly checks the records of the city's Department of Housing, Preservation and Development (H.P.D.) for possible tax arrearages, code violations and other pertinent information regarding the status of the insured and his structure.

The type of pre-inspection done by NYP is believed by arson experts to be the single greatest anti-arson measure a carrier can perform. In addition to its pre-inspection policy, New York Property is distinguished from the voluntary market carriers by its emphasis on claims. Unlike private carriers, N.Y.P.I.U.A.'s stress is on saving money through strict claims techniques rather than simply profiting through underwriting. Certainly, the residual market carrier's goal is to provide a service to undesirable risks, not to make money. But it is important to note that N.Y.P.I.U.A. has been able to operate in the black, even though it writes insurance in the worst of all possible markets. This illustrates the fallacy of the assumption, usually made by voluntary market carriers, that strict claims policies are somehow antithetical to profitable business. If all voluntary market carriers adopted the same or similar anti-arson techniques and claim policies, no competitive edge would be granted any one company. The following outlines the claims practices currently used by N.Y.P.I.U.A.

N.Y.P.I.U.A. monitors risk by inspecting every

insured building three times annually. According to a high ranking executive at N.Y.P., the monitoring program is a full-time, ongoing operation costing approximately \$7,000 a month.<sup>20</sup> Between April and fall of 1981, 32,000 risks were checked statewide. Of these, 605 reports were made. These 605 reports were filed on buildings which, because of some physical factor (vacancy, for example) were thought worthy of further investigation. One hundred and ninety-six policies, or almost one-third of the 605, were in fact later cancelled. Clearly, these were the worst risks of a very bad lot. They represented buildings most prone to serious fires that could cause great damage and require large settlements. The monitoring program operates in conjunction with the project described above, in which N.Y.P. checks its risks by regularly perusing the records of the City's H.P.D. Using both footwork and computers (neither overly expensive), N.Y.P. is kept aware of the physical status of their risk. This enables it to cancel unworthy risks before they burn and to use the information compiled about such buildings to mount a viable legal defense should they deny payment to a suspect claimant.<sup>21</sup>

Indeed, N.Y.P. is known for its willingness to go to court to contest claims arising from suspicious circumstances. All suspicious claims received by N.Y.P. are identified as such and are subject to special attention. Information about a troublesome case comes from a variety of sources. As Charles Russ, Vice-President of New York Property, has written:

....there is input on these kinds of cases from public authorities, in-house claims examiners, independent adjusters, and experts retained at the earliest stages of a loss and claims department managers. This exchange of information between insurers and public officials in particular is essential if a strong denial of payment case is to be constructed. 22

Once in court, the goal of any insurer is to deny or at least lower the sum the suspect claimant will receive. N.Y.P.I.U.A. frequently manages one or the other. If the insurer lowers the proceeds, he creates a deterrent effect by delaying payment for up to several years. The claimant not only receives less money than he may have expected but is forced to wait a lengthy period of time. Many industry officials contend that delaying payment is, in itself, a useful way of deterring arson for profit.

Approximately 400 claims a year, according to Mr. Russ, are litigated due to suspicious circumstances, possible fraud, or inflated claims figures. An additional 25 a year are "marked off," that is, denied payment without reply from the claimant. Mr. Russ estimates that over \$4,000,000 per year is saved as a result of these actions.<sup>23</sup> At the same time, arson is deterred since each of the 400 cases serves as a warning to the profit-motivated arsonist that burning a building for the insurance proceeds is not always a wise business investment.

#### Policy Changes in the Residual Market

As Gelvin Stevenson has noted, the main problem

with the FAIR. plan is that they have legitimized redlining. Private market insurers, knowing someone will fill the gap, can avoid writing policies in a high-risk area simply because it is a high-risk area. More important, the rates originally charged by N.Y.P. were sufficiently high to discourage many landlords from buying insurance at all.

While some FAIR plan landlords did without insurance, many were picked up by the non-admitted market. The rest were covered by in-state insurers who, due to higher investment returns or the need for capital in a tight money market, or the ability to charge high rates, and the lack of further rioting, were attracted to policies which previously had been thought too risky.

This process is known as "depopulation," and the industry, hoping to reduce the size of the loss pool, has encouraged it. In fact, the residual sector can serve as a way of keeping the market elastic. Those customers who due to location have few competitive options can be dumped into the state-subsidized residual pool when market conditions dictate reducing losses. Later, when the economy emphasizes the usefulness of large amounts of ready capital, these marginal risks are once again picked up. All this without antagonizing better customers who are the mainstay of the industry.

As previously noted, N.Y.P.I.U.A. has developed the best arson prevention measures in the industry. However, the presence of an officially mandated residual market carrier causes other less obvious arson-related problems.

Due to its size, with 95,000 policies statewide and approximately 60,000 in New York City, N.Y.P. has an enormous effect on the way fire insurance is written in the metropolitan area. From the industry's perspective, the effect is a good one. As explained above, the presence of a mandated residual carrier makes insurance available to all, while at the same time avoiding high-risk underwriting and charges of redlining.

In New York City, the N.Y.P.I.U.A. has stabilized insurance losses at a rate acceptable for the industry but devastating for the marginal neighborhoods experiencing the fires. Thus, although the urban scene in the 1980s was not characterized by riots such as those of the late 60s or the firestorms of the early to mid-70s, it has been marked by terrifyingly high arson rates. In the first six months of 1981, the Bronx, a borough described by New York Times columnist Sidney Schanberg as a "household synonym for abandonment, hellish crime, devastation, terminal urban disease and, in the imagery of some of its quarters, saturation bombing," led the five boroughs with 96 greater alarms (fires which require the placing of a second alarm). Manhattan was next with 69, Brooklyn, Queens, and Staten Island followed with 57, 40, and 17, respectively. The Bronx leads all boroughs in greater alarms by almost one-third,<sup>24</sup> even though it contains only 11% of the city's buildings. Regardless of which borough suffers most, the 279 fires in six months requiring at least a second alarm are troublesome.<sup>25</sup> Obviously, large portions of New York, including most of the old infamous neighborhoods

which burned in the past (and brought about the FAIR plan in the first place), are still burning. Yet, as many industry members interviewed noted, these high arson rates are not visible on their profit ledgers. Indeed, even the perceptive Mr. Schanberg fails to record the source of much of the devastation he alludes to: a good number of these fires were deliberately set. These statistics suggest that the city's arson problem, whether measured as a percentage of the total number of fires or of serious fires, shows little sign of being eliminated.

With N.Y.P. taking care of the bulk of the high risks and the others dispersed among the 317 member companies and the non-admitted market, status quo in fire insurance is reasonably comfortable. The cost of funding N.Y.P.I.U.A. is a burden the industry is happy to bear. However, in light of the constantly high arson rate, some questions about the efficacy of this arrangement must be raised. Is N.Y.P. to be a permanent feature of the insurance scene? Some city fire officials feel that the FAIR plan should be subject to a sunset law requiring a citywide return to coverage by private in-state insurers operating in competitive basis. This idea has some merit. Clearly, those covered by N.Y.P. suffer economically by having to pay more for inferior coverage. On the other hand, those not covered by N.Y.P. are not subject to adequate scrutiny upon application or upon claim submission, thus encouraging arson. Theoretically, the institution of a loss pool method of coverage constitutes a holding action until homeostatis

is regained. Yet, in 13 years, there has been little progress toward returning to a non-subsidized market. It is becoming increasingly evident that a residual market carrier of some type will be present in the New York fire insurance industry for many years to come.

This is not an insignificant point. In the last five years, N.Y.P. has written fewer policies although the total number of buildings insured has remained the same. Clearly, these structures are insured in some way. Chances are that many of these policies are being picked up by excess and surplus line insurers, who account for the least arson deterrence.

Which is worse, the lack of arson deterrents in excess and surplus insurance, or the economic burden placed on honest policyholders by high F.A.I.R. plan rates? In the mid-70s, the high price F.A.I.R. coverage placed a great strain on those insured in inner-city areas. Today, with N.Y.P. premium rates 20-40% above the private market rates, arson for profit is the more immediate threat. Insurance is available to all who wish it, including arsonists. Therefore, it would seem to be crucial to improve the quality of underwriting procedures in order to reduce the number of arson-prone policyholders. While N.Y.P. policies reflect this orientation, excess and surplus line carriers pose a problem for those trying to eliminate arson.

#### Excess and Surplus Line Carriers

Excess and surplus line carriers (or the so-called

non-admitted market) are insurance companies which write insurance in a state although they are not registered within it. Known as E&S, they are largely unregulated, and the business they write is not subject either to underwriting, claims practice restrictions or to regulations of the state's insurance department. Theoretically limited to writing policies that in-state insurers do not wish to carry, the excess and surplus market handles high-risk insurance situations. According to the New York State Insurance Department, excess and surplus carriers write between 3 and 4 percent of the total statewide casualty insurance. However, since the excess and surplus market is generally under-reported, most independent observers feel this figure may represent only a third of the business actually written. Since the non-admitted carriers are generally located within high-risk areas, they may represent a major market force in much of the city. Investigators in both the insurance industry and law enforcement agencies agree that compliance with fire insurance laws and information sharing immunity statutes is lower in the non-admitted market than among in-state insurers. Non-admitted carriers are also difficult for arson investigators to locate, much less question.

The excess and surplus market consists of two types of companies: (1) "Foreign" companies, located out of state but within the United States, and (2) "alien" companies, centered outside the United States. The latter have mushroomed in recent years, the best known among them the several syndicates

of Lloyds of London which have written fire as well as other insurance in the United States.<sup>26</sup>

Under New York State Insurance Regulation 41, non-admitted carriers are only allowed to write coverage that has, after "due care and diligence," been found unacceptable by in-state companies. This rule is enforced by requiring that all excess and surplus policies initially be submitted to, and rejected by, at least five in-state companies, including New York Property. In practice, however, this limitation is easy to overcome.

Why is this non-regulated market permitted, and why do in-state insurers permit competition not subject to the same regulations that affect them? These questions pose a number of complicated and controversial issues. Most insurers concur that excess and surplus lines perform a service to the industry as a whole, including customers. They tend to underwrite aggressively and are willing to tailor coverage to the needs of unusual customers. Lloyds, for example, is well known for having provided insurance for Jimmy Durante's nose and Betty Grable's legs. Less known but more common is the high-risk coverage insurance that excess and surplus lines provide on nuclear reactors, maritime ventures and computer leasing arrangements. This type of coverage helps to stimulate investment in these high-risk areas.

In addition, excess and surplus lines affect fire insurance by being the only available alternative to the residual market in many areas. Some observers feel that this serves to

circumvent institutionalized redlining (that may have had greater validity during the self-regulated period at N.Y.P.I.U.A. than in the present). The presence of large numbers of non-admitted carriers in an area is at best a dubious blessing for a neighborhood. Since the mid-70s, the amount of New York City fire insurance coverage written by E&S companies has increased greatly. Simultaneously, New York Property has used increasingly strict anti-arson underwriting techniques and has cut its arson losses. It is widely believed that some of the policies dropped by N.Y.P.I.U.A., or those risks unsuitable for the voluntary market who found N.Y.P.I.U.A.'s anti-arson efforts and tough claims practices to be cumbersome, found their way into the non-admitted market.

By expanding and contracting countercyclically with the industry as a whole, the non-admitted market supposedly keeps insurance available in good times as well as bad, and provides a safety valve against overregulation. As Bernard J. Daenzer, President of the Alexander Holden Group, explains:

The essence of the American[insurance] system is that when business cannot be written in the standard market it qualifies for the excess and surplus lines market. The E&S underwriter has the freedom of pricing and the freedom of form. His treatment of risk may require deductibles, restrictive wording and rigid inspections and detailed programs of loss control. 27

As Table 7 shows, excess and surplus line carriers have become an increasingly large part of the New York insurance market. During the last decade, a hefty portion of the premium dollars written by excess and surplus carriers corresponds to the high-arson neighborhoods of New York City.

TABLE 7

Total Premium Dollars Written in New York State by Excess and Surplus Line Insurers

	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>
Total Market E/S Net Premiums	50.46	55.73	50.61	44.30	44.00	75.01	116.00	193.02	214.60	209.00	217.4
E/S Fire Insurance Premiums* "	7.29	7.24	7.62	5.43	4.27	7.41	17.07	23.56	20.30	26.39	22.9
E/S Fire Insurance as % of All Fire Insurance Premiums*	.35%	.33%	.33%	.24%	.19%	.31%	.64%	.87%	.67%	.86%	.79%

\* Only exclusively fire policies, not including allied lines

Source: New York State Insurance Department. All figures in millions of dollars.

"Fire Insurance" as measured in Table 7 is a somewhat misleading term. Much fire coverage is written under a combined policy (with burglary, casualty or other types of insurance), and is not measured in Table 7. These combined policies have come into use with increasing frequency since 1970. In Table 8, fire and allied lines are shown as a percentage of all fire and casualty coverage.

To the extent that the non-admitted market provides a safety valve against overregulation, it might have been a force against arson. Not bound by unfair claims practice regulations, it is easier for a non-admitted company to refuse to pay a claim than it is for an admitted company. In fire insurance, however, this has remained only theoretical. Most excess and surplus companies are too removed from risk to utilize tough inspections policies.<sup>28</sup>

Because of the risk of insolvency (or arbitrary refusal to pay) in the non-admitted markets, the New York State Insurance Department prevents excess and surplus carriers from writing life insurance annuities, accident and health insurance policies. In addition, in November 1980, the department demanded that a guarantee fund for non-admitted carriers be posted within the state to protect customers against insolvency. Also required were signed affidavits certifying five denials of insurance coverage from in-state companies. Both new regulations have been strongly attacked by the industry as unnecessary and unduly restrictive.<sup>29</sup>

The insurance business has become more and more international in nature. While underwriting high risks is a long established practice in London, Daenzer cites the "dramatic growth of alien carriers in the excess and surplus lines market in the last ten years."<sup>30</sup> National entities and third world-based companies play an increasing role. Therefore, the U.S.

market may remain attractive to those companies even in "bad" times, because of the relative value of the U.S. dollar. As Lynn Brenner states:

international business is a chance to grow beyond saturated home markets and there's often a favorable exchange rate to boot; they [Western European and Japanese companies] can afford larger dollar losses than their competition if those losses cost fewer yen or Dutschemarks. 31

Due to the high cost of dollars and the fact that currency is needed for Western business transactions, developing nations may accept relatively high losses for U.S. cash flow. Another, more sinister, reason for excess and surplus line profitability may be that, within the non-admitted market, some unscrupulous companies may take advantage of the lack of scrutiny and regulation in order to "launder" money for organized crime.<sup>32</sup>

The excess and surplus market grew rapidly through the 70s. Excess/surplus fire insurance and allied lines increased steadily from 1974 to 1979 (see Table 8). This corresponds to a tightening of regulations and increasingly aggressive anti-arson techniques initiated by New York Property.<sup>33</sup> It may indicate the presence of risks which even the residual market (with its high premium rates) would not take, and represents the preference of insureds who could be in the residual market but would prefer to avoid the close scrutiny and aggressive claims practices of N.Y.P.I.U.A.

In theory, a policy must be rejected by N.Y.P.I.U.A. and four other in-state insurers before being taken by an excess and surplus carrier. In fact, this can be bypassed by

TABLE 8

Excess and Surplus Lines in Premium Dollars. Fire and Allied Lines

	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>
Total Excess Line Premium Dollars* Fire and Allied Lines	5.3	8.3	23.0	28.9	30.4	32.3	28.5
Excess Lines as % of all Fire and Casualty Premiums	1.22%	1.86%	2.39%	3.44%	3.55%	3.27%	3.36%

\* In millions of dollars.

Source: New York State Department of Insurance.

offering a slightly different type of coverage from that provided by N.Y.P., or adding a small but unusual clause the admitted market would be reluctant to grant. One major New York City-based underwriter, who requested anonymity, stated that he routinely receives "offers" of policies from brokers that they know he is not interested in, with the expectation that the insurer will decline the offer. The insurer reports that he will, on a steady basis, "sign off" on these policies in order to keep up a good working relationship between the broker and the insured.<sup>34</sup> Thus, while excess and surplus brokers strongly condemned New York State's new verification of declination requirement as unfair, impractical and "absurd," the requirement does not by any means exclude non-admitted companies from the market.

The dangers of the growing excess/surplus market in fire insurance are clear. Instead of contracting by the supposed adverse selection process when the voluntary market raised its interest rates and investment profit, they expanded into what were once "high risk" areas.<sup>35</sup> The E&S market began to look for new business in the late 70s, and one place it found was the inner city fire insurance neglected by so many voluntary in-state carriers. The 1982 Agent's and Buyer's Guide lists 94 non-admitted companies looking for fire insurance business in the "residual class" described by the Guide as "those risks which are, in effect, left over after the better risks are written under package policies." This refers to risks

many companies would find unacceptable. Since many alien companies writing fire insurance are not listed in the Guide, this may represent only a small portion of E&S carriers.

The potential for irresponsible underwriting and ultimately for arson because of this structural situation is exemplified by the collapse of the Sasse syndicate of Lloyds of London. The syndicate, a collection of 110 Lloyds members, was named for its underwriting agent, Frederick Sasse. In February 1975, this syndicate negotiated an agreement with Transworld Underwriters, a Miami-based insurance agency also known (among other corporate names) as Denhar, which gave that entity binded authority for Sasse. In July of that year, Sasse also entered a reinsurance agreement with I.R.B., the State reinsurance company of Brazil, which reinsured the entire Miami-based business.<sup>36</sup>

During 1976 (1976-1977 period saw a huge expansion in the amount of excess line fire insurance written generally, as seen in Table 8) Denhar began to write fire insurance business under the Lloyds name in the Bronx and similar neighborhoods at rates as low as one-third of those charged by the FAIR plan.<sup>37</sup> One South Bronx brokerage alone wrote at least 30 million dollars worth of business in the first seven months of 1976.<sup>38</sup> This insurance was then widely offered to owners in the residual market. As Business Week described the situation:

Before Sasse or Lloyds were aware of what was happening, the Miami agent had produced fire insurance that even Lloyds risk oriented underwriters would consider chancy. In one month, Sasse fire

insurance resulted in more than 46 million dollars in claims, mostly from the one Miami agent. Nowhere is there better evidence of the failure of Lloyds internal control. 39

While the dollar figure is large, it tells only part of the story. It must be remembered that every claim refers to a fire. Forty-six million dollars in claims in an area where property values are low to begin with represents a significant number of fires. When viewed this way, these numbers symbolize more than just entries on an insurance ledger. The human toll behind the figures is staggering: neighborhood businesses are forced out, buildings become unviable because they suddenly find themselves next to a vacant shell, and many committed owners and tenants are coerced into leaving an area they inhabited for decades.

The extent of arson for profit in the Sasse incident is at present uncertain. The timing of most of the losses (following IRB's cancellation of its reinsurance contract in March 1978, during the grace period following Sasse's cancellation of 100 million dollars of Denhar insurance in May 1978), made many investigators suspicious.<sup>40</sup> Were Denhar and its agents lax, or were they the victims of unscrupulous owners? Were they and the owners both victims of the general social malaise of the area? Where responsibility lies is unclear, tied up in a maze of criminal and civil proceedings, in this country and internationally. It is clear that Sasse, motivated by its desire for U.S. dollars, located 3,000 miles from home (with

little supervision from the Lloyds exchange), took risks it did not understand and had no idea how to police. Sasse itself, interestingly enough, backed off from the risk by heavily reinsuring the Denhar package; But ultimately, Sasse's irresponsibility did not merely cost the firm 46 million dollars. It also involved many victims of fire insurance not party to the agreement. It cost the City of New York tax dollars. It cost the people of New York housing stock. It caused tenants undue suffering.

Some people in the insurance industry responded to Sasse-type practices by calling for a free private market to replace regulation. Sasse, by this argument, had been driven out of business by writing too many losses. They contend that allowing unprofitable businesses to die is the surest way to prevent this sort of activity. An occasional bankruptcy is a warning to the irresponsible underwriter tempted by visions of high returns on investments. However, problems with this argument should be pointed out. First, with the vast explosion of alien companies in the excess and surplus lines business, someone is always willing to take on a particular risk, especially if misrepresented by an unscrupulous broker. The traditional argument that a broker will not give too many known bad risks to a company for fear of being dropped, or that an insurance company will not pass too many bad risks on to reinsurers for fear of not being able to do business with that reinsurer in the future, makes little sense when there are more and more alien insurance companies and overseas reinsurers anxious for business.<sup>41</sup>

Lloyds closed the Denhar book of business in May 1978. Following this episode, another non-admitted carrier, the Dover Insurance Company, was started by Lloyds in Bermuda and reinsured through the Bedford Insurance Company of Hong Kong.<sup>42</sup> In December 1978, under one Dover master policy, there were 44 major fires in 40 buildings in New York City.<sup>43</sup> Even after these scandals, principals in the Denhar organization continue to write business from the Virgin Islands and Hong Kong.<sup>44</sup> In this way, insurers can bankrupt several companies and continue to do business.<sup>45</sup>

The people of New York must ask whether the cost to communities and individuals is worth the competitive integrity of the "free" market. Can the city afford regulation by trial and error? The fact that Sasse collapsed is little comfort to the tenants and neighbors affected. Perhaps the example of Sasse's irresponsibility will cause more caution in the future. Perhaps not. What is important to assess is whether the benefits to consumers and the industry derived from further regulation of excess and surplus lines is worth the risk.

From the insurer's point of view, losses on this level can be disastrous. The Sasse loss was a fatal blow to one syndicate, though not to Lloyds as a whole. When Lloyds lost over \$300 million on computer leasing agreement policies in the mid-70s, Lloyd's Chairman Green described them as "chicken feed" compared to the 4.5 billion dollars in premiums the total Lloyd's membership takes in annually.<sup>46</sup> While such

losses hurt many Lloyds members, the exchange generally remained visible. Even the computer leasing losses or potential losses from the Moscow Olympic boycott pale in comparison to what is still Lloyd's prime business, maritime insurance. Compared to several major shipping disasters, a wave of fires in a dingy section of an outer borough of a distant city must seem negligible indeed.

The alien presence in the excess and surplus market continues to grow. Sayre and Toso, one of the largest E&S brokerage houses, currently places business for nearly 200 insurance companies based abroad, most of whom have far less internal controls on their business than do the syndicates of Lloyds of London. While Sayre and Toso Vice President Geoffrey Nichols calls "irresponsible" the "lunatic fringe" of the market for reckless pricing and underwriting, he announced in 1979 that his company would extend its business into areas where few non-admitted companies previously operated. He described the 14% annual growth rate of Sayre and Toso as "moderate," as compared with that of many smaller brokerage houses.<sup>47</sup>

In this kind of market, it is small wonder that so many high-risk owners can find some broker, who in turn can find some company willing to insure nearly anything at the right price. Brokers may spread bad risks among an ever-expanding number of companies. Should a broker write so many losses that he becomes a liability to one company, it is unlikely that his other companies will hear of it. Admitted carriers complain of not knowing what a broker writes for other

companies.

"We have no idea what kind of losses our agents write for our competitors," complained the chief underwriter for a major admitted carrier in New York City. "We can't find out, and they must spread losses out, a few to us, a few to others, a few to the surplus lines. That way the agent does not have to turn down business if a guy comes to them and says, 'I'll give you my ten good buildings if you can place my two bad ones, too.' A few really bad applies might even be taking kickbacks....We really have no way of knowing."<sup>48</sup> The problem increases geometrically when a broker does business with companies based on four continents. If a company does drop a broker for producing losses, he can find another eager for his business. There is literally a world to choose from.<sup>49</sup>

As a Business Insurance spotlight report in 1979 pointed out, E&S brokers are in a "constant hustle" for new business during periods like the present when in-state carriers are taking more risk on themselves: "Keeping up cash flow means finding new customers in spite of the willingness of the standard market to write high risk business."<sup>50</sup> When the primary market wants to write more business at the same time that the supplementary market is expanding, for the economic reasons discussed above, the latter must become both more creative about how it writes its business and less choosy about what it writes. Today, excess and surplus line brokers have more difficulty finding things to insure than companies to insure risks. This situation is compounded by the presence

of cheap and available reinsurance.

### Reinsurance

All existing anti-arson efforts and anti-arson regulation conducted by the insurance industry have been aimed at the party legally responsible for a claim -- the primary insurer. However, in the modern insurance market, this is often not the party with the largest financial interest in loss control. While the primary insurer has the first responsibility on any insurance claim, typically 50, 60 and on occasion more than 90 percent of a loss will, in fact, be passed on to a reinsurer.

Reinsurance has been described by one knowledgeable journalist as "laying off the bet."<sup>51</sup> Technically, it is insurance on an insurance policy. The reinsurer agrees, in exchange for premium dollars from the insurance company, to cover the company's losses, either in percentage of total loss from dollar one or all losses over a given amount. In cases where more than 90 percent of the loss is passed on to the reinsurer, the long-term interest of the primary company (that is, the company whose name is on the policy) is actually quite minimal. This practice is known as "fronting" and in these cases the primary insurer is for all practical purposes a de facto agent. Like an agent, the primary insurer is granted a "ceding commission" by the reinsurer. The more competitive the market, the higher the commission. However, unlike an agent, the primary insurer can be held legally responsible for paying a claim within a given period, regardless of whether the reinsurer has paid the original insurer.<sup>52</sup>

The market today is at its most competitive. A large profit can be made on commission alone. Fronting may be used when a company has written more risks than it wants, or has taken unwanted risks to appease a valued customer or broker. In jurisdictions with strict excess and surplus line regulation, fronting may also be employed by a non-admitted company essentially to use the name (for a price) of a local insurer and gain entrance to a market.<sup>53</sup>

More typical in New York City fire insurance are situations where a proportion of a loss is passed on to a reinsurer, who may find himself in the position of having a number of risk-sharing arrangements with other reinsurers called "retrocession." Since the late 60s and early 70s, arrangements have grown increasingly complicated; with more players in the game, higher claims and lower prices, risks are being spread over more and more companies. Lynn Brenner writes:

Today, risks are reinsured and retroceded so many times over, say reinsurers, that it is impossible to trace the ultimate recipient of the premium. 'It can bounce 40, 50 times,' says one expert. 'Fire losses in the Bronx could bankrupt the People's Insurance Co. of China.'

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These years have also seen a change in the form of reinsurance. Traditional arrangements were typically "treaty" reinsurance, where the reinsurer takes on a piece of the primary insurer's entire book for a period of time. In cases of excess reinsurance, he takes all risk over a given dollar amount, or takes pro rata as a percentage from dollar one.

All of these methods are generally handled between companies that had long-standing working relationships which discouraged "dumping" bad risks on the reinsurer. Then, too, there were far fewer reinsurers to choose from before 1965. This also encouraged good relations between primary and reinsurers. Basically, companies wrote reinsurance in their own countries, with the high-risk, big money international market dominated by a dozen or so established giants. This changed considerably. As with excess and surplus line primary insurers, third world companies, national entities, formerly parochial U.S. companies, and wealthy individuals have all climbed on the reinsurance bandwagon. Unlike excess and surplus primary insurance, there is not even a nominal regulatory apparatus to control them.

The most rapidly increasing form of reinsurance is "facultative," the amounts of which have skyrocketed since 1975.<sup>55</sup> This is a "one shot deal" on a particular risk or block of risk. It implies no long-standing relationship with the primary insurer and may tempt companies to "lay off" the worst part of their book on unsuspecting reinsurers.

How does a reinsurer make money on the rejected risks of primary insurers? In treaty arrangements, the reinsurer gets a depleted premium from which the primary insurer's profit has been deducted. Even in outright fronting situations, the premium has been depleted by ceding commissions. Like other insurers, the profit in reinsurance comes from

investment income, not underwriting. The key to reinsurers is a very low overhead, and a long lag time between claim and payment. With little regulation to insure solvency, the reinsurer needs only his client's good faith and a telephone.

The key to investment profit is lag time.

Calculating the lag between the claim and the payment is at the heart of reinsurance profitability. It is an immensely complicated affair. In contrast to the primary insurer, who is subject to unfair claims practice regulations which speed up payment, the longer the lag, the more time the reinsurer has to invest the money.<sup>56</sup> Additionally, when a loss bounces back and forth between a dozen companies, the last in line gets the smallest premium but the longest period of time during which to invest. It can take years before the ultimate party of financial responsibility is reached. When interest rates are high and international investment yield enormous, time really is money for the reinsurer.

How does the world reinsurance market affect primary fire insurance in New York City? First, as was illustrated by the example, the ability to "lay off the bet" encourages irresponsibility in underwriting. Sasse knew that whatever unwise risk it might take, its ultimate reinsurer (IRB) would pick up the tab. Secondly, low prices and increased competition in the reinsurance market leads directly to lower prices and increased competition in the primary insurance market. In the short run, of course, this is good

for consumers. Smith's "invisible hand" is at work, with the low prices that intense competition brings benefitting us all. In the long run, however, the effect may not be so beneficial. Competition and low prices also lead to lower amounts available for operating expenses. This may include inspections, fighting claims, and investigation. Intense competition in the best insurance market has caused many people to reexamine business in the areas where relatively high premiums are still available. For a variety of reasons, arson rates being a major one, inner-city fire insurance is such an area. From the anti-arson point of view, certain properties perhaps should be in the residual market, where anti-arson efforts have been centralized and concentrated. If these high premium risks become attractive to the voluntary market, not because the problems that put them into the residual market are solved, but because those same problems have kept prices high while prices in other sectors have plummeted, then much of these anti-arson efforts are being undermined.

Many observers believe that a large number of reinsurers are virtually insolvent. Should claims be called in at once, their risks could not possibly be covered. This fear is manifested in the increased sales of contingency reinsurance, or insurance against one's reinsurance falling through. If reinsurers do stop paying out in large numbers, the result might be bankruptcies in the primary market, with customers and/or the government left with the reinsurer's

responsibility.

Finally, reinsurance presents the following problem. The party of legal responsibility may not be the party of financial responsibility, while the party of financial responsibility is beyond legal control. Many anti-arson measures, such as the New York State immunity statute (336) and municipal proceeds laws (F.I.P.) presume that catching the arsonists is of primary importance to insurance companies. If the loss is largely passed along, the insurance company's motive to pursue arson investigations are in fact greatly reduced. The more a company is oriented to cash flow considerations, the more this is likely to be true. In the meantime, the party who will pay the claim and does have a motive to investigate is located thousands of miles away, has no facilities to investigate and may not hear about a loss until long after claims regulations may require the investigation to be over. Then, too, if a reinsurer has held the premium long enough to recoup the amount of the claim on his investments plus a tidy profit, the reinsurer has no reason to complain or to be concerned about some distant fire.

While not directly connected to anti-arson legislation, the chaotic state of the current international reinsurance market does play an important part in the wide-open competitive nature of the insurance industry in general. This "quick buck" atmosphere tends to encourage profiteers, legal and illegal, throughout this normally conservative industry. In this way, a lack of prudence, occasionally exhibited in the primary market, is brought about. The effect hurt many not

party to the insurance contract and not at all involved with the insurance industry.

#### CONCLUSION

The insurance industry is a collection of a multitude of regulated and non-regulated companies which run the gamut from underwriting simple insurance policies to reinsuring reinsurance on multimillion dollar policies. Few people outside the insurance industry understand how it works, or else have simplistic notions that insurance companies make money on underwriting and lose money on claims. This is far from the case.

Given the plethora of excess and surplus, reinsurance and voluntary market carriers, law enforcement agencies as well as insureds are rarely aware of who is insuring properties and is ultimately responsible for paying claims. This ignorance further exacerbates any existing irresponsible underwriting and claims-paying practices by the insurance industry. Since the public as well as those responsible for protecting the public against arson-for-insurance so rarely comprehend the dynamics of fire insurance, there is little pressure put on insurance companies to do more to stop arson for profit.

But even where some public pressure has been exerted against insurance companies to change their business practices, they have rarely responded. For instance, a 1979 Senate subcommittee investigation into the insurance industry's role in arson for profit concluded that insurance companies

write policies on practically anything and that they pay off on suspicious fire claims rather than resort to investing in civil litigation.<sup>57</sup> The Senate investigators ended their study by saying that "Companies truly wishing to contribute [to anti-arson efforts] must pay closer attention to the problem and show a greater willingness to alter their own day-to-day business practices, several of which currently make it easy for arsonists and their clients to commit crimes with little fear of apprehension."<sup>58</sup>

Four months after this investigation, the same Senate investigators said that "In the last four months that have passed since the conclusion of the subcommittee's hearings, key segments of the industry -- the American Insurance Association, Insurance Information Institute, National Association of Insurance Agents, and National Association of Independent Insurers, among others -- have not contacted the subcommittee either by way of responding to criticisms of industry policies or setting forth anticipated reforms for the future."<sup>59</sup> Four years after these hearings, little has changed.

The existence of the high-risk insurance pool in New York, N.Y.P.I.U.A., served to take the onus off other companies from enacting stricter underwriting and inspections practices designed to reduce the incentives for arson for profit. The existence of N.Y.P.I.U.A. plus the generally accepted "common"

sense" notion that insurance companies have a vested interest in stopping arson for profit allows the insurance industry at large (the excess and surplus carriers, reinsurers, and the rest of the voluntary market) to operate free from any significant criticism for their role in arson for profit.

It is this lack of public examination or criticism which indirectly contributes to the absence of any real effort by the government or the industry itself to create and enforce strict anti-arson policies. Since the insurance industry makes its profits on investments, uses underwriting to generate large amounts of capital, reinsures large blocks of policies, allows unregulated excess and surplus line carriers to underwrite high risk policies which the voluntary market declines, and simply writes off most arson losses, it is opposed to any additional regulation. Even though it can be successfully demonstrated that N.Y.P.I.U.A.'s anti-arson efforts do save money in the long run, the rest of the insurance industry will make no voluntary attempt to adopt these or any other procedures. The rationale for this is two-fold. First, establishing anti-arson measures, such as strict inspection of buildings, litigating claims, or denying payments, will require an outlay of capital which the industry is reluctant to undertake. Litigating claims and inspecting buildings is an ongoing expense as opposed to paying out arson claims which at least have the advantage of the insurance company having and investing the premium money

before paying out the claim. As far as the industry is concerned, it is simply too expensive to institute N.Y.P.I.U.A.'s anti-arson procedures on an industry-wide basis. Second, it is bad for business. To start strict inspection and underwriting policies would, according to the insurance industry, send consumers scurrying to companies which did not have these procedures. No company alone will take this step, even if a company thinks it will save money on arson claims in the long run, because of the potential for losing future business.

Thus, the relatively unregulated and complex nature of the insurance industry provides, however unwittingly, incentives for arson for insurance money.

The solution to many of these problems lies in more, not less, as the insurance industry maintains, regulation of insurance practices. For example, excess and surplus carriers are already forbidden to underwrite automobile, health, and life insurance in New York City. Why not arson as well? If the industry were required by legislation to do pre-inspections of policies over a certain amount, there would be no loss of customers since all New York companies would be required to perform the inspections .

This much is certain. Any move to restrict the activity of excess and surplus carriers and to enact stricter underwriting procedures will not come from the industry itself. The onus is on the public in general and on public officials and state legislators in particular to educate themselves about the incentives to arson for profit inherent in current

insurance practices and to take remedial action. The connection between arson for profit and the policies of the fire insurance industry are clear. If arson for insurance money is to be reduced, the insurance industry must become the focus of sharp public and governmental attention.

Chapter 5.

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CHAPTER 6. A STUDY OF CONVICTED ARSONISTS IN NEW YORK CITY

Since people from all walks of life for all kinds of reasons commit arson, a natural place to look for more illuminating data about the crime would seem to be from the prison population. If the criminal justice system were successfully investigating, apprehending, and convicting arsonists, we would expect to find those who committed arson for insurance fraud as well as people who set fires directed at a particular person among this prison population. Also, landlords who set fires to rid buildings of low paying tenants and tenants who set fires to relocate for better housing would be among those incarcerated for arson. One quick look at the simple arrest statistics for arson, however, makes clear that this common source of information for criminologists, inadequate as it is for other crimes, is even less useful for the study of arson. As the table at the end of Chapter 3 pointed out, the percentage of arsons resulting in arrest have been so minute that the study of those simply arrested for arson will yield no representative findings about who commits arson and why.

With fewer than 6% of arsons resulting in an arrest in New York City, the population of those arrested for arson cannot be representative of any group except for itself. If the researcher wants to find out who and why people commit arson, he will have to look elsewhere.

There are, however, other reasons for examining who gets arrested and, especially, convicted for arson. Though not representative of the at-large population of arsonists, such an examination can reveal who gets caught. Why are these people apprehended and not others? Are there similarities among those arrested in terms of their motivations and characteristics? Is the criminal justice system geared toward apprehending a particular type of arsonist to the exclusion of others and, if so, what are the sociological as well as policy implications of such selective law enforcement?

A study which tried to answer these questions would be narrower in scope than one which attempted to address the question of who commits arson and why, but at least would be based on reliable and available data. Studies of arrested arsonists have previously been undertaken in this country as well as abroad. None have addressed these issues and most suffer from extrapolating from an unrepresentative sample to the at-large population.<sup>1</sup> Additionally, no other study has systematically provided information on the circumstances and life situations of those committing arson. To simply collect demographic information about the race, sex, and socioeconomic status of convicted arsonists tells us

very little about the social, financial, or psychological influences which played a significant part in the final decision to commit arson. The classification of arson into a diverse set of motives, while useful, also ignores the specific intent of the arsonist. Arsons which are similarly labelled as jealousy or revenge fires may in fact have very little in common. It may be convenient for researchers to read arrest reports or court documents and glean that Mary ended a relationship with Fred so Fred set fire to Mary's apartment, and classify this as a revenge fire. However, without further inquiry into the life situation and the genesis of events which led up to the crime, simply categorizing it as revenge obscures the real motivations and stresses behind the act. Almost everyone is jealous or feels the desire for revenge at some point in his life. Few people actually act on these feelings, however, through violence. These emotions must be coupled with other reasons, either psychological, economic, or social which help translate the emotion into action.

In order to find out whether there are any similarities among those arrested for arson in New York City, which kinds of arson most frequently result in an arson conviction, and what are the life situations of convicted arsonists, intensive interviews with convicted arsonists would yield the most information. Because of the limited and impressionistic nature of this study and due to the relatively non-theoretical nature of the literature, the study was designed primarily to

develop hypotheses rather than to test them. With so little known about the subject, the main purpose of such an exploratory study is to provide researchers with insights and data about who gets caught and convicted and why they do what they do. The one hypothesis that was tested was that people who committed premeditated and organized arson for profit would make up a tiny percentage of those convicted.

### The Sample

Because arson is a felony, anyone convicted of arson must serve at least one year in prison in a New York State facility. Although in 1982, when the data was collected, there were 474 people arrested for arson in New York City,<sup>2</sup> only 109 were convicted for arson that year.<sup>3</sup> New York State prisons are divided into three categories of security: maximum, medium, and minimum. Inmates are assigned to a particular category depending on their criminal history, severity of the crime, length of sentence and other factors. The arsonists were split among these categories with 44% in maximum, 22% in medium, and 33% in minimum. (This adds to 99% because of rounding.)

It was decided that a sample size of .25%, which reflected the same classifications as the population, would be sufficient to be representative of convicted arsonists in New York City. The sample was also chosen to ensure a gradation of prison sentence from least to most severe.

Permission was granted by the New York State Department of Corrections to contact and interview the prisoners. The decision to participate in the interview was voluntary and all prisoners

were informed that the interview was absolutely confidential. In all, 27 prisoners were contacted for interviews and 21 completed the interview, a completion rate of 81%. An addition 2 talked informally (without the structured interview) so that there is some information on 23 respondents. Eighteen males and three females were interviewed.

#### The interview

The interview consisted primarily of open ended questions and lasted about one hour. The interviews were conducted in the counseling or interview room located in the prison. They were designed to elicit the reasons for committing the arson, to collect demographic information, and to get a basic idea of the respondents life situation and history by asking about employment, medical or drug problems, friction with friends or neighbors, education history, language or cultural problems, etc. The history, both social and criminal, is based on the interview data. Less than one third of the court files for the sample were located to check the accuracy of the interview data. To the small extent that records were checked against the interviews, the data was accurate.

Because the N for this exploratory study is very small (21), there will be no statistical measures of significance. Instead, the findings will be discussed in simple percentages.

#### The study

An initial review of the interviews resulted in the classification of "motivations" in the following way:

<u>Reason</u>	<u>%</u>	<u>N</u>
As a result of argument with friends, family, or acquaintances	65	15
As a way to earn some cash	13	3
Insurance fraud	9	2
Vandalism	4	1
As a way to get relocated by the Dept. of Social Services	4	1
Covering up another crime	4	1

Each of these motivations seems unrelated to the others and, in many cases, the fire itself seemed incidental to the crime.<sup>4</sup> For example, setting a fire to take revenge on an ex-lover doesn't appear to have much in common with being paid to burn down a supermarket. However, it became clear that there were striking similarities among almost all the respondents. In fact, all 21 of the respondents who completed the formal interview had three general similarities:<sup>5</sup>

- 1) their lives were filled with very stressful conditions,
- 2) they were heavily dependent on a small number of close relationships for support in coping with these conditions,
- 3) they set the fire immediately after one very stressful event, frequently involving someone in one of these afore-mentioned supportive relationships.

In an attempt to measure how much stress was present in each respondent's life, a scale of stressful "life conditions" was developed based on factors which the respondents found particularly stressful. There were a total of 17 possible

stress indicators which could be gleaned from all the interviews. These were:

- 1) birthplace outside of the United States,
- 2) low paid employment,
- 3) unsalaried employment,
- 4) children under 18, belong to respondent's mate,
- 5) living in a deteriorated neighborhood,
- 6) a difficult childhood,
- 7) criminal justice record,
- 8) criminal adult record,
- 9) language of cultural difference,
- 10) left high school before graduation,
- 11) apartment in deteriorated condition,
- 12) sporadic employment history,
- 13) history of alcohol or drug abuse,
- 14) problems paying bills,
- 15) friction with landlord or superintendent,
- 16) short term residence in neighborhood,
- 17) children under 14 belonging to respondent.

These measures of stress are clearly different than other well accepted measures<sup>6</sup> which usually examine particular events such as divorce or death. There are cumulative and long term stressful conditions.<sup>7</sup> Particular life events, except for the ones precipitating the arson, were not elicited. However, the frequency with which almost all the respondents mentioned many of these life stresses made it clear that each of these factors provided a great deal of stress. All these indicators had a weight of either 0 or 1, 0 if the respondent did not suffer from the particular stress, 1 if he did.

Out of a possible score of 18, no one scored lower than 5 and the highest was 14. The mean score was 8.5. Though clearly an impressionistic measure of stress, having an average of 8-1/2 of the stressful life conditions seems to indicate a relatively stressful existence for the majority of the respondents.

Within this stressful existence, a rupture in a close interpersonal relationship immediately precipitated the setting of a fire in 71% (15) of the cases. Of these 15 cases, 10 had a quarrel with a spouse or lover, 3 argued with a friend or acquaintance, and 2 quarreled with a sibling. A typical response from someone who had quarreled with a spouse or lover was the following:

I was living with a young lady. I had a real crush on her. We were young and didn't know about man and woman relationships - about what it was to pay rent and get an apartment. And we had problems with our family. I was young. She was young. I was quite jealous at that time. We had an argument - which was no surprising thing. We'd break up and get back together...We didn't understand. We were too young. Too eager to see things right too quick. Rent, gas and electric. We wouldn't deal with it at the time. We would run out of food. There was just two of us - she and I.

Going on to explain why he set the fire, the respondent said:

One day we broke up for a good while. [It was] not the way we wanted it. I wanted to say, "I'm sorry." I called home. A dude answered my phone. I was furious. Jealous. I went over there. The next thing I knew the place was on fire and I was in jail. It was an overnight thing. It was my first apartment. We got the furniture from my paternal grandmother. I treasured it. I said if he's going to take you, I'll take my furniture. I poured benzene on it and lit it. We had benzene because we were painting the house with blue and white flowers. She and I still see each other today. We have a better understanding.

Sometimes, it was the threatened disruption of a family which precipitated a fire:

I came from a broken home and it was my determination to keep things together...I was in two other cases [drug-related and ending in probation] and between these two cases, I started having mental problems with my wife. My wife wanted to live with my mother-in-law.

We fixed up a house next door which belonged to my mother-in-law. I spent a lot of money fixing it up. Then my wife would lock our sons in my mother-in-law's house. Things got terrible between us.

I left. She told me to come back. Then she left me and my two sons. Then I took them to my mother-in-law's. The court said I had visiting rights. Every time I visited the kids, the kids begged, "Daddy, don't go." I tried every legal means to see my kids. I didn't sleep for months.

One night I said I wanted to see my kids. I hadn't seen them for months. This was really disturbing me. I couldn't even go to work. I went into the house and said, "I want to see my kids." We started to argue. I had my boy in my arms. My mother-in-law threw something in my eyes. My eyes started closing. A friend said she threw lye and that I'd better go to the hospital.

I thought I'd be blind for life. I wasn't thinking fire. My father-in-law had gas nearby. I must have been insane. I wanted to get them out of the house. The house was a monster to me. I lit a match. I didn't throw it. The gas blew up. The house caught on fire. Nobody was hurt.

Me and my wife communicate now. Now me and my wife are best friends.

I didn't get a kick out of it all. I wasn't thinking at all - just angry. [I set the fire] before I realized what I was doing. If you got time to think or people close to you are there, they can bring you to your senses.

In two other cases, the argument which directly preceded the fire was with a sibling and in three other cases with close friends. In all five of these cases, the argument was with a person who provided important emotional support.

The remaining six respondents did not set fires immediately after an argument with someone who provided emotional and psychological support. These fires had taken some premeditation which was absent from the other 15 cases. In three of these cases,

the respondent was promised payment for setting the fire. The other three involved a fire set so the family could relocate, a fire set by an alcoholic who burned an abandoned bungalow, and an owner of an abandoned building in the South Bronx who hired someone to burn it down.

Though the circumstances in all these fires differ and would usually be categorized quite separately, there are again similarities among all of them. All involved a recent accumulation of stressful circumstances. The three who were paid to set fires all lived with relatives in crowded apartments and regarded themselves as "outsiders." All had difficulty in maintaining close relationships.

The first respondent lived with his mother as well as with his brothers and sisters. Two women asked him to set the fire, one of whom he was very close with and part of the "payment" was that their relationship would continue after the fire. He took angel dust and set the fire but claimed that the continuance of the relationship was more important than the money.

The second respondent was living with an aunt and cousins in an apartment in which he did not feel welcome. He was addicted to methadone. A friend, whose boss had commissioned him to set a fire for a rival supermarket, asked him to set the fire. The relationship with his friend and his addiction were sources of stress which preceded the arson. He had no idea how to set a fire and was caught while in the process of climbing up the supermarket roof.

The third respondent lived with his sister, her husband and their five children. He did not feel welcome in the apartment, had recently quit his job, and took money to burn down a bar which just so happened was directly under the apartment in which his sister lived.

None of these three paid arsonists fits the classic description of the cool and professional firesetter. In fact, none had ever set a fire before.

The last three cases would be considered arson-for-profit cases and also have common characteristics. One respondent set fire to his apartment so that he and his family could be placed on a relocation list in order to move from his deteriorated and dangerous building. He was unemployed and living on welfare received by his wife and children. Coming to the United States from Puerto Rico had caused language problems, and he could not bear conditions in the apartment:

There was no steam, no heat. Both my wife and the girl (one of 2 babies) got sick. There were roaches and mice running around. The rest of the apartments were empty. I had to pay the super to clean.

Moreover, the respondent thought the super was in love with his wife.

Of the remaining two respondents, one seems to have committed the classic arson for insurance fraud. He had hired someone to burn down a building he owned so he could collect insurance proceeds. Again, a closer look reveals that this was no member of an organized ring. The property was not purchased

for the purpose of milking or burning but instead had been the result of a lifelong dream to own some property. He was a Puerto Rican immigrant who had worked for thirty years at two jobs in order to purchase a small building in the South Bronx. After he bought the building, "everything fell apart." The area rapidly deteriorated, he could not get tenants to live in the buildings, and it was constantly vandalized. He and his wife argued incessantly over the building which led to their separation. Finally, in an attempt to recoup some of his investment, he hired someone (who turned out to be a police informant) to burn down his building.

Regardless of the particular motivation, the majority of these arsonists led highly stressful lives and, directly prior to the fire, either had an argument with someone who provided needed support or had a recent accumulation of additional stressful events. These were not loners or drifters, as Inciardi<sup>8</sup> has described "revenge" firesetters. Seventy-five percent of the sample had lived in the same neighborhood for four or more years. Seventy-eight percent were employed when they set the fire.

Why these people used fire as a weapon instead of something else can only be answered through individual psychiatric examinations. Why they decided to lash out at something or someone is more understandable. To gain some understanding, however, researchers must not be satisfied with categorizing arsons into separate and distinct motivations. The stated motives of revenge, jealousy or money, though on their face very different, may have much in

common. The investigation and examination of the circumstances prior to the fire is essential if research on arsonists is to move beyond categorical descriptions. The similarities among many kinds of arson may be more important than their differences.

This is not to say that all arsonists have common environmental and psychological similarities which cause them to set fires. However, the similarities that emerged from this sample in terms of the cumulative and immediate effects of stressful situations suggest this is an avenue which must be explored. In fact, there is already a literature, though usually not associated with crime, on how stress leads to violent responses.

In the literature on child abuse and domestic violence,<sup>9</sup> there are many references to how stressful life events and circumstances can contribute to low self-esteem which can lead to violent behavior and acting out.<sup>10</sup> Scarcity of financial resources, unemployment, and poor living and working conditions also contribute to intrafamilial violence."

These stressors can be mediated in a number of ways depending on the social resources and coping skills available to individuals. The existence of a supportive family can lessen the outside environmental stresses. However, families and interpersonal relationships can also be the source of stress as in many cases of wife battering and child abuse. When close relationships, which were undertaken to in some way mediate outside stress, become sources of stress in and of themselves,

violence directed at a close family member (wife or child) may result. In this regard, some types of arson appear to be very similar to family violence. Why arson specifically is chosen, other than because it is easily available and requires no strength, clearly depends on an individual's psychological make-up. But the strains toward violence appear similar for the convicted arsonists in New York City as they are described by theorists on family violence. There are no categorizations of "jealousy" or "revenge" type wife or childbeating. It obviously makes little sense to attribute such a superficial label to an act of violence directed at a family member. There are, of course, other important differences between family violence and the kinds of arson we see here. Wife or child beating is systematic and repetitive violence over time, while these arsons are one time violent explosions. It is, however, the strains toward violence, whether or not repetitive, which must be examined as they are by theorists of family violence.

Family violence theory has managed to move beyond labels of motivation to the social and environmental events surrounding and leading up to the violence. As the preliminary results of the study indicate, it is time for criminologists to likewise move beyond the labels of jealousy or revenge in explaining why some people commit arson.

The fact that many of these arsonists live such stress-

filled existences, and that frequently arson was set after an important social tie had been severed, indicates that the concept of violence as a response to stress is important for criminologists to explore in the case of arson as well as other crimes. That this study was purely exploratory and impressionistic is undeniable. It has, however, shed some light on similar features between what have heretofore been regarded as very different kinds of arson.

As noted at the beginning of this study, the sample is representative only of convicted arsonists. The concept of stress-induced arson would not apply, for instance, to any organized professional effort at setting arsons for large financial profit. What is noteworthy is that there was not one person who was part of such an effort in the sample, confirming the one hypothesis which was made prior to the study. In other words, as was stated in Chapter 2, this kind of arson for profit is being committed with impunity in New York City. Arson, committed in an organized and premeditated fashion, is perhaps one of the easiest and most profitable crimes to commit without detection and apprehension.

Law enforcement agencies must take note of this phenomenon and increase their efforts at apprehending and convicting people who set arson for profit. As indicated by the nature of the crimes being committed by the people in the

sample, law enforcement authorities are relatively successful at apprehending non-premeditated, spontaneous and amateur arsonists who set fires with little thought of escaping detection. It is the others, the non-stress induced arsonists, who must increasingly be made the focus of law enforcement efforts.

Chapter 6.

Footnotes

1

For example, E. Robbins and L. Robbins in "Arson with Special Reference to Pyromania," New York State Journal of Medicine (1967); Levin in "Psychological Characteristics of Firesetters," Fire Journal, v. 70 (1973); and J. Inciardi in "The Adult Firesetter: A Typology," Criminology 8 (1970). All made the mistake of generalizing from inadequate samples.

2

New York City Police Department Arrest Reports and Complaints, December 1982.

3

New York State Department of Correction supplied this data. This is actually an important finding in and of itself. In 1982, when there were 474 known arsons in New York City, only 109 people were convicted, a conviction rate of 23%.

4

That is, when a respondent sought revenge or wanted to lash out at someone, he or she could have accomplished this in a variety of ways such as with a fistfight, a gun, a knife, a threat, etc. The fire itself was only one of a variety of possible ways of acting out the emotion. In the case of an organized arson for profit scheme which involves milking or emptying buildings of unwanted tenants, fire is an intrinsic part of the crime. Many of these arson for profit schemes could not be achieved without arson which is very different from arsons which are not motivated by financial gain.

5

The two respondents who were only spoken with informally did not conform to this pattern. Both were white middle class men who lived in relatively unstressful circumstances and who denied (the only two to do so) committing the arson.

6

See Bruce Dohrenwend's Peri Scale in "Socioculture and Social Psychological Factors in the Genesis of Mental Disorders," Journal of Health and Social Behavior.

7

Some of these stressful conditions such as criminal histories and leaving high school before graduation are actually responses to other stressful events but are also stressful in and of themselves.

8

Inciardi, op cit.

9

See David Gil, "Psychiatric Profile of a Firesetter," Journal of Forensic Sciences 7 (1981); Kenneth Farrington, "Stress and Family Violence," in Strauss and Hotaling, The Social Causes of Husband and Wife Violence, Minneapolis: University of Minnesota Press (1980).

10

See Henry Kaplan, "Self Derogation and Adjustment to Recent Life Experiences," Archives of General Psychiatry, 22 (1975).

11

John O'Brien, "Violence in Divorce-Prone Families," Journal of Marriage and the Family, 33 (1971).

CHAPTER 7. THEORIES OF CRIME CAUSATION AND THEIR POSSIBLE  
APPLICATION TO ARSON.

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Until now, we have seen that arson is in itself a peculiar and unique crime made especially difficult to decrease because of the problems of city bureaucracies and the realities of insurance industry practices. Only a very small number of arsonists are prosecuted or convicted; as we have seen, the "revenge" or "jealousy" motives attributed to them often hide causes of deeper political and economic significance. Yet, arson is committed not only by junkies but by businessmen, by landlords as well as tenants, capitalists as well as revolutionaries. Arson cuts across class, racial, sexual, political and psychological boundaries.

How, then, can a crime which encompasses such a spectrum of motives, behaviors, and perpetrators be explained? Is there one existing theory of crime causality which accounts for this form of criminal behavior? Must several theories be utilized and combined into an eclectic mix, or must new theory be developed to accommodate this diversity within arson? This chapter will try to answer these questions by reviewing existing theories of criminal behavior in an attempt to examine the extent of the explanatory power of each theory when applied to arson. The applicability or inadequacy of each theory will be discussed.

This chapter will deal with modern theories of crime causation rather than with early eighteenth century classical theories of crime. Though they were extremely important in

establishing a basis for criminal law and penology, classical theorists were not interested in social and political causes of crime. Classical philosophers, most notably Beccaria and Bentham, focused only on individuals as free, thoughtful and rational beings. Viewed in this way, the decision to commit a crime was based on a pleasure-pain principle. Men would rationally weigh the benefits versus disadvantages of committing a criminal act and, on this basis, decide whether to act. Given this emphasis upon free will, both Beccaria and Bentham focussed on how society could increase the disincentives for committing a crime. According to these theorists, eliminating disparities in sentencing, the development of uniform legal codes, and the assurance of swift and certain punishment were responses which society could make to deter and deal with crime. Obviously, these notions had a profound effect on criminal law and procedure throughout the world. What the classical theorists never fully explored, however, were the special sociological causes of crime. To simply state that each crime was the result of a deliberate individual decision ignores the social, economic and psychological influences which led to the option, consideration, and decision to commit the criminal act.

Among the more modern theories which do examine causation are theories which concentrate on individual characteristics which are nonetheless not entirely in the individual's control. They are theories which by concentrating

either on biological or hereditary characteristics, or on psychological or psychiatric traits of criminals, distinguish criminals from non-criminals.

### Biological and Hereditary

From Lombroso to Hooten to the Gluecks to Mendelsohn, social scientists for the last 150 years have attempted to correlate biological characteristics with criminality. Cesare Lombroso is perhaps best known in this field for his attempts to correlate a criminal type with physical characteristics. Lombroso asserted that criminals exhibited certain physical traits such as large cheeks and jaw bones, a deviation in head size, large fleshy lips, a receding chin, and numerous other physical abnormalities.<sup>1</sup> In the last 50 years, however, it has been Sheldon and Eleanor Glueck, Hooton, Mednick and Christiansen, and Von Hentig who have become well known for their studies associating biological or hereditary characteristics with criminality. Though these theorists differ somewhat in their theories of crime, all isolate either biological or hereditary characteristics which increase chances for criminality. However, none of these theorists were strictly deterministic, except perhaps Hooton. Because someone may have certain biological characteristics or a father who is a hardened criminal does not necessarily mean he will be criminal as well. On the other hand, these characteristics do increase one's chances for becoming a criminal in interaction with one's environment.

Later biological studies, especially those of Mednick and Christiansen, are impressive, large scale and methodologically rigorous. They cannot be dismissed as easily as the older biological studies of Lombroso or Hooton which have been convincingly criticized for their major sampling and methodological errors.<sup>2</sup> However, all these studies have an inherent methodological problem which becomes even more serious in the case of arson. Crime in America and in most countries is underreported. Some crimes, like homicide, have relatively high reporting rates while others, such as rape and assault, have rates of only 50%.<sup>3</sup> When rates of apprehension and conviction for most violent crimes are taken into account, one must always question whether the population of criminals available for study is actually statistically representative of all criminals.

In the case of arson, this problem is particularly acute. The underreporting of arson, combined with the negligible arrest and conviction rates, would make any study of the biological or hereditary characteristics of arsonists completely invalid. With only nine out of every hundred known arsons resulting in an arrest and less than half of those resulting in convictions, there is an even less representative study sample of arsonists than for other violent criminals. While the recent biological, biosocial and hereditary studies merit attention, they usually assume representativeness of their samples. For some crimes, they may well be representative. But until arson reporting is vastly improved and accompanied

by major increases in arrest and conviction rates, biological hypotheses and studies have to be largely excluded from serious consideration.

Individualistic psychological and psychiatric theories of crime, like biological theories, focus more or less exclusively on study of the criminal, rather than on social environment. Freudian theory is the most widely applied system of psychoanalytic thought which has been used to study criminals.<sup>4</sup> Though Freud never paid particular attention to crime or criminals per se, his theory encompasses all human behavior, including crime. Thus, the vast majority of all psychological research done on arson is psychoanalytic in nature. Within the psychoanalytic tradition, fire has from time to time been mentioned explicitly:

Fire has played such an important role in the development of civilization that myths of its origin have appeared in nearly every culture, and it is a universal symbol in language and literature for sexual passion and for extremely destructive impulses. It is a small wonder, then, that so many theorists have accepted the notion that firesetting is an expression of repressed sexual impulses. Psychoanalytic theory systematically integrates myth, symbol, and behavior in an account of firesetting. 5

Indeed, firesetting and its connection with repressed impulses appears several times in Freud's own writings. In Civilization and Its Discontents, he devotes a lengthy and fascinating passage to discussion of fire:

If we go back far enough, we find that the first

acts of civilization were the use of tools, the gaining of control of fire and the construction of dwellings. Among these, the control of fire stands out as a quite extraordinary and unexamined achievement....Psychoanalytic material, incomplete as it is and not susceptible to clear interpretation, nevertheless admits of a conjecture--a fantastic sounding one--about the origin of this human feat. It is as though primal man had the habit, when he came into contact with fire, of satisfying an infantile desire connected with it by putting it out with a stream of his urine. The legends we possess leave no doubt about the originally phallic view taken of tongues of flame as they shoot upwards. Putting out fire by micturating -- a theme to which modern giants, Gulliver in Lilliput and Rabelais' Gargantua, still hark back--was therefore a kind of sexual act with a male, an enjoyment of sexual potency in homosexual competition. The first person to renounce this desire and spare the fire was able to carry it off with him and subdue it to his own use. By clamping down the fire of his sexual excitation, he had tamed the natural forces of fire. This great cultural conquest was thus the reward for his renunciation of instinct. Further, it is as though woman had been appointed guardian of the fire which was held captive on the domestic hearth, because her anatomy made it impossible for her to yield to the temptation of this desire. It is remarkable, too, how regularly analytic experience testifies to the connection between ambition, fire, and urethral eroticism. 6

Freud also made the connection between firesetting, bedwetting and repressed sexual urges in both Dora: An Analysis of Hysteria and in The Interpretation of Dreams. It is not surprising, then, given Freud's theorizing about the symbolic nature of fire and the central role fire has played in civilization, to find that most psychological research on arson has been Freudian in nature.

This connection between firesetting and repressed sexual impulses appears in myriad psychoanalytic studies of arsonists. It has been made so frequently that the image of the pyromaniac who masturbates at the scenes of the fires he sets has been widely popularized. A similar connection between

enuresis and firesetting also appears in many psychoanalytic studies.<sup>7</sup>

The study which perhaps best illustrates the psychoanalytic approach to researching arson is Lewis and Yarnell's Pathological Firesetting,<sup>8</sup> which remains the largest study ever done on arsonists, psychoanalytic or otherwise. For Lewis and Yarnell, all firesetting is pathological. Though there are many kinds of firesetting, all firesetters are psychologically ill to these authors. In the conclusion to their study, the authors claim:

....myths and legends, then, interrelate fire and sexual symbolism. The woman becomes activated into a living flame imbued with creative power only by union with the masculine element, an act universally symbolized by coition, the apotheosis for the creative love of a man and a woman, joined together. To some extent, all firesetters set a fire to fulfill this symbolism. They enjoy the fire as a substitute for a feared or physically impossible literal sexual experience. Some find complete sexual satisfaction; others -- merely a pleasurable release which might be equivalent to a sexual orgasm, though they are not necessarily conscious of this association. 9 (Emphasis added.)

And:

In the ideation of these firesetters, the element of resentment and desire for revenge are actually more predominant than the clear-cut desire to use fire for a sexual substitute. This resentment was often precipitated by a woman's rejection. However, the woman in question might be representing any feminine role -- a mother, fiancée, wife, prostitute and so on; the frustration might be real or fantasized. This finding would be anticipated from the psychoanalysts' conclusions that the small child's first fire fantasies are directed as a sadistic weapon against the mother who seems to be withholding the expected evidences of maternal love. 10

As these passages make clear, there is a strong connection between Freud's formulation of the meaning of firesetting and the bulk

of other psychiatric studies on arson, including those of Lewis and Yarnell.

Unfortunately, it is precisely this strict Freudian line and the exclusively psychiatric approach to arson which make the bulk of the work done in this field very poor. The most obvious criticism, once again that of sampling, also applies to other criminological studies but is especially highlighted with regard to arson. Not only is the sample of arrested arsonists too small to be representative of any population, but most psychoanalytic studies use sub-samples of this sample. They utilize people who have been arrested, convicted, and either forcibly placed in or referred to psychiatric institutions. Like biological theory, the psychoanalytic study of these arsonists tends to become circular. The studies are of arsonists who have been caught, convicted and, as a result of examination by other psychologists or psychiatrists (themselves largely Freudian) have been sent to an institution. It will come as no surprise when they are found to evidence all the Freudian symptoms of repressed feelings and thoughts. Thus, the original deficiency of poor sampling is compounded by a selection process which channels many arsonists to institutions or other rehabilitation centers.

In addition, larger and more basic problems plague psychoanalytic theory as a tool for the explanation of arson or other criminal activity. The explanatory power of psychoanalytic theory is limited to that of the individual. There is no doubt that a competent psychoanalyst can discover

very real explanations for the particularities of an individual's behavior, criminal or otherwise. However, the power of generalization, or the ability to detect trends and patterns of criminal behavior, is severely limited within psychoanalytic theory. Psychiatric case studies are at a loss to explain why some people with certain characteristics become criminals and others do not. Surely many people who are not criminal exhibit the same characteristics Lewis and Yarnell associate with firesetting. Yet, these people are not firesetters. Why? The only answer the psychiatrist can give is that these others all have some important psychological trait, such as a strong super ego, which keeps their unconscious motivations in check. The exact nature of these "normal" traits, however, can only be discovered through analysis. Since research studies, conducted by psychiatrists on arson as well as other crimes have not been able to document a personality trait which is common to criminals and absent in the population at large, the limitations of this theory in explaining crime are obvious. To the extent that arson and other forms of crime are committed by people from all social and economic spheres, it is difficult to believe that the diverse collection of people labelled criminal have a similar psychological make-up which causes criminality. What one is burdened with upon utilization of this theory, then, is a huge collection of individual explanations for crime. Yet, these drawbacks have not stopped the FBI from summarizing numerous psychological profiles of arsonists for law enforcement personnel.<sup>11</sup> For the sociologist who seeks more

general explanations, however, these individual profiles are inadequate. In order to discover social traits which influence some people and not others to commit crime, it is clearly necessary to move beyond individual explanations of crime.

Psychiatric explanation of crime can be useful in explaining the particular genesis of a given criminal act. But it is the larger social and economic factors which give birth to the individual's psychological development which first must be examined. Psychiatric theories must be used within a sociological context. Therefore, the elucidation of social and economic variables which influence people's actions is the sociologist's primary concern. To concentrate on psychoanalytic theory as a way of explaining crime in the absence of other variables is to operate in a vacuum. The reason one small landlord in desperate financial straits commits arson while another in a similar social and economic situation does not may be psychological in origin. Yet, it is the social and economic forces which make the option of arson possible and desirable to both landlords which must be identified and analyzed before we can understand, and hopefully correct, the personal psychology which gives rise to a decision to commit arson.

Most theories of crime do in fact emphasize the social nature and causes of criminality. These theories stress the pivotal importance of such factors as community, social interaction, and learning. One of the most widely applied and studied social theories of crime causation is that developed by the Chicago School sociologists in the early 1920s.

In their study of urban life, sociologists like Robert Park developed a theory based on animal and plant ecology. The resulting school of thought was called human ecology. The ecology school is significant for two reasons. It may have been the first exclusively American sociological theory of crime causation. Second, and more to the point of this analysis, it is a popular theory which most people accept as an explanation for the rise of arson in New York City.

Human ecology was defined by McKenzie as

....the study of the spatial and temporal relations of human beings as affected by the selective, distributive and accommodative forces of the environment. Human ecology is fundamentally interested in the effect of position, in both time and space, upon human institutions and human behavior. 12

Accordingly, these sociologists examined the spatial and temporal patterns of cities which they made analogous to plant and animal organisms. The city, for these sociologists, had many "natural areas" where different groups of people lived in a kind of organic unity. Using New York City as an example, these areas might include ethnic neighborhoods such as Chinatown and Little Italy, neighborhoods where most people are from the same socioeconomic and occupational levels such as Brooklyn's Bay Ridge and Queen's Astoria, and neighborhoods which are physically isolated from other areas in the city such as Queen's Rockaway or Bronx's City Island. All these natural areas are characterized by a high degree of organization and community. The residents often will have lived in these areas for generations, and each may possess a certain degree of self-sufficiency. Businesses will buy their supplies from

other businesses in the area, and residents will do most of their shopping and spend much of their leisure time in the neighborhood. Social and community institutions such as close knit families and active religious groups will be essential parts of these natural areas. As a result of these factors, each neighborhood will have strong formal and informal social controls.

In addition to the concept of a natural area analogous to the way in which certain plant and animal communities live together symbolically, McKenzie also makes a human analogy to the way in which new plant and animal species may sometimes invade and take over an area. McKenzie describes the human process of invasion as that which

constantly takes place in the racial and economic complexion of residence neighborhoods, or of the type of service utility within a business section. Invasions produce successful stages of different qualitative significance, that is, the economic character of the district may rise of all as a result of different types of invasion. This qualitative aspect is reflected in the fluctuations of land and rental values. 13

McKenzie also outlined the conditions which would precipitate such an invasion including

...(1) changes in forms and routes of transportation; (2) obsolescence resulting from physical deterioration or from changes in use or fashion; (3) the erection of important public or private structures, buildings, bridges, institutions which have either attractive or repellant significance; (4) the introduction of new types of industry, or even a change in the organization of existing industries, (5) changes in the economic base which make for redistribution of income, thus necessitating changes of residence; (6) real estate promotion creating sudden demands for special location sites, etc. 14

These invasions of new occupants can have, according to these ecologists, harmful effects on a particular neighborhood:

The mere movement of the population from one part of the country to another -- the present migration of the Negroes northward, for example -- is a disturbing influence. Such a movement may assume, from the point of view of the migrants themselves, the character of an emancipation, opening to them new economic and cultural opportunities, but it is nonetheless disorganizing to the communities they have left behind and to the communities into which they are now moving. 15

Thus, McKenzie blames the high crime and juvenile delinquency rates in certain areas on the influx and the outflux of migrants, and the concomitant breakdown of the social order.

An example of this type of invasion/succession dynamic is New York City's South Bronx. Much of the South Bronx was, in McKenzie's terms, a natural area inhabited primarily by Eastern Europeans and other white ethnics. Small businesses, social clubs, community groups, and a shared historical and cultural heritage all contributed to a tightly knit stable community. In the early 1940s, many southern blacks and Puerto Ricans began to migrate to the South Bronx. Rents and the general cost of living were sufficiently low to attract these "invaders" to this area. Many were drawn to New York itself by the prospect of better jobs, schooling, and higher welfare benefits. As these new occupants moved in, the old moved out. A combination of fear, racism, and a continuing influx of people into this neighborhood contributed to the gradual replacement of a predominantly white by a largely minority neighborhood. Although simplified, this represents the type of invasion-succession model used by social ecologists.

The South Bronx example can be extended to many other city neighborhoods including Brownsville and Bedford Stuyvesant in Brooklyn, and Jamaica in Queens. In all of these neighborhoods, poor minorities replaced white ethnics who had inhabited the area for many years. Each neighborhood encountered rising crime rates and varying degrees of destruction of the neighborhood's housing stock. It is this kind of invasion and succession which the ecologists claimed led to social disorganization in the community under invasion. The lack of social controls which result from this type of mobility result in "areas of demoralization, of promiscuity, and of vice."<sup>16</sup>

Before the applicability of this theory to arson is discussed, a few general criticisms of it should be offered. Some sociologists have attacked the theory as essentially tautological. Social ecologists claim that neighborhoods characterized by high crime are areas of social disorganization. However, the social disorganization is in turn responsible for the high crime rates. The theory then becomes circular. Other writers have pointed out that areas which do not have strong community, social, family and religious ties are surprisingly absent of crime. Many middle and upper class high rise housing projects have low crime rates. These are complexes which are characterized by anonymity and almost no common ties between the apartment dwellers. Projects such as New York's Stuyvesant Town and Brooklyn's Starrett City are both large sprawling complexes with none of the characteristics which the ecologists use to indicate high levels of social cohesion. Yet both have very low crime rates.

Marxist criminologists such as Taylor, Walton and Young have faulted social ecologists for ignoring the importance of housing and the power of real estate interests To dictate patterns of mobility and to create ghettos as well as "upscale" areas. All of these criticisms are valid. There are areas which lack social organization but are not characterized by crime. Additionally, the social ecologists did not take into account the role of housing in creating these patterns of mobility. However, the theory does accurately describe many of the social dynamics which occur during changes in a neighborhood's population or use, and points to correlations which do exist between areas which have been invaded by poor minorities/immigrants and high crime rates.

The example of the South Bronx is a seemingly perfect case of the social disorganization theory at work. A natural area is invaded by poor minorities and immigrants. During and even after the process is completed, the South Bronx becomes synonymous with crime and especially with arson. In the space of 25 years, what was once a natural area becomes a symbol of urban destruction and decay. In fact, most people, including public officials and policy makers, believe in an almost strict interpretation of social disorganization theory. A constant theme which appeared over and over in interviews with investigators, prosecutors, and local officials was that the Hispanics who settled in the South Bronx had a different

culture than "us." Firesetting in these sub-cultures was an acceptable expression of anger, revenge, or the desire to settle disputes. According to popular belief, this willingness to set fires, coupled with high rates of unemployment (one measure of social disorganization) and the resultant frustration, led to the gradual destruction of the area by arson. This explanation is clearly quite compatible with the essential elements of social disorganization theory. It is also one of the most commonly held theories about why arson has increased so dramatically in the 1965 to 1980 period as this "invasion" took place.

If, for instance, one examines the areas in the city which have the highest levels of arson incidence, it is evident that they are largely poor minority areas which, twenty to forty years ago, were largely white, low crime neighborhoods. As the following map indicates, arson levels are highest in Manhattan's Lower East Side and in Harlem (the only exception, since Harlem was primarily a black neighborhood from the 1920s onward); in Brooklyn's Bushwick, Brownsville, East New York and Coney Island; in Queen's Jamaica; and in the South and Southwest Bronx. Thus, public perception associates poor blacks and Hispanics with arson.

There are serious problems, however, with this connection. It fails to examine other variables of neighborhood life which might explain the high rate of arson. As mentioned, one criticism of social disorganization theory was that it ignored

the importance of housing and the struggle for space in the city. In the opinion of the English criminologists Taylor, Walton and Young

.....the Chicago theorization has to be modified to take into account the ways in which interest groups in the (Weberian) market situation can utilize political power to their advantage and to the disadvantage of other, less well-placed and less well-organized groups. The substantive sections of Race, Community and Conflict are concerned with a description of the obstacles and constraints facing the new black immigrant entering Birmingham (the five year waiting list for council houses, the selection processes operated by the council when immigrants do eventually qualify, the periodic symbolic prosecutions of immigrant landlords by an indifferent "host" society, etc.) The formal modification of theorization, however, is the attempt to demonstrate that the process of invasion, dominance and succession delineated by Park, Burgess and others are really descriptions of the way in which very real social interests (housing classes) move into new areas and successfully achieve authoritative control: or, alternatively, the ways in which the other real -- and less powerful-- interests lose out in the ongoing struggle in the accommodation market. A process which elsewhere might be seen as a kind of Darwinian selection of the naturally superior is translated and seen for what it really means in terms of social relationships: 'a process of discriminative and de facto segregation which compelled coloured immigrants to live in typical conditions and which of itself exacerbated racial ill-feeling.'" 17

Returning to the example of the South Bronx, a closer examination of the dynamics of the real estate and housing markets indicates that there were other factors at work which might have contributed to social disorganization and to high arson rates. A host of other variables, in addition to the gradual changeover of the South Bronx, accompanied the area's eventual destruction. In 1947, rents were frozen in New York City. Except for small increments, owners of multiple dwellings were not allowed to raise tenants' rents. New York

has always been a city of tenants; tenants outnumber homeowners in New York City by a four to one margin. Politically, the institution of rent control was and still is a popular one. But landlords and their associations have long been vociferous in complaining that the profit making potential of many marginal properties is destroyed by rent control. The income from the unchanging rents cannot cover the maintenance costs of inflation in rising fuel and repair costs. Thus, in the mid 1960s, years after rent control had been initiated, many buildings started to become vacant because it became unprofitable to run them. The extent to which this process occurred remains unclear. Proponents of rent control point to the destruction of housing in other cities which do not have rent controls and the mounting aggregate profits of landlords as proof that rent controls do not necessarily lead to housing abandonment. Regardless of the scope of this dynamic, it does seem reasonable to say that many very small landlords who owned one or two properties did find that the imposition of rent controls cut down on their properties' profitability. Small landlords who perceived that they were in desperate financial circumstances could try to sell the building at a loss, set it on fire to try to collect insurance proceeds, or simply abandon the property while collecting rents as long as possible. All three options seem to have been widely used.

Many landlords bought buildings at a low price to

convert them into welfare housing. With a continuing influx of a poor minority population into New York City, the welfare rolls grew. Welfare recipients received housing allowances which to these "slumlords" represented a constant if very low flow of rent money from welfare tenants. Though welfare tenants could only afford meager rents, the amount of money put back into the building by landlords was negligible. Thus, many of these buildings deteriorated rapidly. This caused many tenants to withhold rents which once again began the chain of either selling at a cheap price or burning the building for insurance money.

This dynamic resulted in properties which were not provided with essential services and consequently in rapidly declining neighborhoods. As housing became progressively worse, many welfare tenants reacted by burning their own apartments. Sometimes, they did this because of regulations promulgated by New York City's Human Resources Administration which stated that welfare tenants who were burned out of their apartments would be put at the top of a relocation list. They would be given priority status for the best housing available to welfare families. Though designed for families who were legitimately affected by rampant fire in their neighborhoods and homes, the policy seemed to have unintended consequences. As housing in the South Bronx degenerated, the incentive for welfare families to burn their own apartments in order to find new homes became more and more attractive.

At the same time large numbers of Hispanics

continued to arrive in the South Bronx, New York City was completing over 25,000 units of subsidized middle and lower middle class housing in Co-op City. This had the effect of draining much of the South Bronx's older population who for years had been on waiting lists for this housing. The exodus created a large pool of vacant apartments which were frequently rented by the incoming poor minority families. The sudden arrival of these minorities resulted in the lowering of much of the property values in the area and spurred a continuing "white flight." Owners of buildings in these areas were then faced with the arrival of a large poor minority population and a concomitant emigration of older white residents from the area. With many apartments vacant, and other declining property values in the area, landlords found that their only viable option was to milk their buildings. This "milking" process was repeated thousands of times in the South Bronx. Either landlord-hired arsonists would burn down the buildings, or tenants, enraged at the lack of services, would strike back at the landlord by setting fires themselves. Therefore, the destruction of the South Bronx coincided with the arrival of poor minority immigrants, many of whom were on welfare. Much of the destruction was caused by residents themselves. Revenge fires directed at landlords and "play" or vandalism fires in vacated buildings were often set by these new inhabitants. Their firesetting, however, may have been a reaction, and perhaps a rational reaction, to economic forces beyond their control. These new immigrants were used by landlords in the process of milking their buildings, which

eventually deteriorated into completely substandard housing. Many immigrants were killed in arsons set by landlords or their agents. As their buildings and entire neighborhoods crumbled around them, social organization also disintegrated.

As buildings steadily deteriorated, residents would set fires to seek revenge against the landlord. Buildings would quickly become vacant and attractive targets in which neighborhood kids could play and occasionally set fires. When arson arrests occurred from time to time, it was almost never a landlord who was arrested. Many landlords did not have to set the fire themselves, knowing that if they neglected their buildings long enough, some angered tenant would start a fire. When landlords did set the fire, they usually hired professionals who could easily avoid detection. Thus, the arson arrests made in the South Bronx were usually neighborhood residents who had set fires out of frustration and alienation. This, of course, would affect the results of an arrest study such as the one discussed in the previous chapter.

Large banks also played an important role in the dynamic of housing destruction in the South Bronx. A study undertaken by the National Urban League revealed that banks in the Bronx were reinvesting the money deposited by residents back into the Bronx.<sup>18</sup> The perception was that the Bronx was a risky area for financial investment. In addition, by requiring large deposits on mortgages and charging in excess of current market interest rates on homeowner loans, the banks

reduced their commitment to Bronx housing even further. Consequently, bank policies had the effect of even further worsening the financial predicament of many property owners in the Bronx and steering the middle class out of the Bronx. This "redlining" policy helped perpetuate a self-fulfilling prophecy of housing destruction in the South Bronx.

In the 1960s and 1970s, then, the South Bronx saw sharply declining real estate values, massive redlining by Bronx banks, the wholesale destruction of buildings through active or passive action by landlords and insurance brokers, one of the highest unemployment rates in the city, and almost no success by law enforcement authorities in stemming the destruction. This poses an important theoretical question: what constitutes a rational response to living in such an environment? Undoubtedly, the South Bronx has a very high rate of crime committed by residents against residents. The phenomenal rise and growth of neighborhood gangs and gang warfare was a trademark of the South Bronx in the 1970s. Was this high crime rate and lack of social controls and organization the result of the invasion and dominance of a neighborhood by poor immigrants who had conflicting values and modes of conduct with the host society? Or was it social disorganization fueled by, or the result of, a larger political economy which destroyed the physical superstructure of the neighborhood and used neighborhood residents as pawns in an economic game which netted some people huge amounts of money? Perhaps it was the latter, a series of events which led to a high degree

of alienation and frustration among neighborhood residents, which led to the breakdown of social controls and organization.

That the political economies of the South Bronx played a role in its eventual destruction is certain. The degree of that role is debatable. Where traditional social disorganization theory and popular opinion are both mistaken is that they fail to take this role into account at all. Perhaps any group of people who were placed in the same kind of environment as were South Bronx residents would have evidenced the same symptoms. Social disorganization theory does accurately reflect the different outcomes which result from the invasion and dominance of neighborhoods and natural areas. The frequent breakdown of community ties, social disorganization, high crime and delinquency rates are symptomatic of many of these invasions. However, the theory is seriously lacking in its attribution of these pathologies solely to the invading group, ignoring broader political and economic forces. The criticism by Marxist criminologists of this theory, especially pertaining to arson incidence in many of New York City's neighborhoods, is justified. Crime may be the result of social disorganization but it is essential that all the antecedent conditions of that breakdown be identified and analyzed. By concentrating only on the "invaders," social disorganization theory ignores major variables which also contribute to community disorganization.

Even with its shortcomings, the theory cannot explain all types of arson. Arson set by vandals, arson for

revenge, and some types of landlord arson may be explained by social disorganization theory. However, other types of arson committed by landlords for profit, and sophisticated arson for profit schemes, do not fall within the range of social disorganization theory.

Many types of arson for profit are committed in neighborhoods where there is no social disorganization at all. Other types of arson for profit are committed in areas which are completely devoid of people. For example, commercial arsons, committed by businessmen and entrepreneurs who are experiencing large financial losses, may have no relationship at all to the surrounding neighborhoods. Landlords who are burning their buildings to rid them of tenants so that the buildings may be converted to luxury housing are not doing so because formal and informal neighborhood controls are disappearing. Yet, social disorganization theory does not explain this. We are left with the problem that even if the theory can explain some kinds of arson, what explains social disorganization?

Another theory of crime which has a much broader sociological scope than disorganization theory is Robert Merton's application of Durkheim's concept of anomie to crime and deviance in America.<sup>19</sup> Durkheim defined anomie as the absence of regulative social forces which serve to keep man's moral needs in check. Only society as a whole has a moral power which is greater than that of the individual. Society, then, should function as moderator of its members' desires. In this function, society determines the rewards and values for workers in various occupations. The knowledge that if

one follows a certain occupational path, one will receive prescribed rewards is the way in which society instills self-control and harnesses the passions of man. When this fails and society's members are no longer certain about which actions will lead to what rewards, a condition of anomie prevails. Particular periods in society's history, notably dramatic economic growth or crisis, serve to upset the societal equilibrium. New occupations and classes of occupations may be created, there may be sudden changes in the economic class of large numbers of people, relations between occupations and labor and management may be instantly altered. During these periods, the moral power of society cannot react quickly enough to establish new social values and rules for action. The distinction between acceptable and unacceptable modes of conduct are blurred. Societal restraints upon new aspirations and modes of behavior are immediately unknown. It is this state of sudden societal deregulation and the weakening of the society's moral guidance of its members which is characteristic of a state of anomie. The resulting confusion and blurring of the distinction between legally and morally acceptable and unacceptable may, as Durkheim showed, lead to higher suicide and crime rates.

In 1949, Robert Merton utilized Durkheim's concept of anomie to explain crime and deviance in America.<sup>20</sup> Like Durkheim, Merton argued that what determined and guided desires was not any innate force but society. Social structure exerts pressure by defining approved goals and acceptable conduct for realization of these goals. In America, Merton argued, the

overriding culturally induced goal is the acquisition of wealth. The approved behaviors for attaining this goal are the basic tenets of the Protestant work ethic: hard work, self-sacrifice, honesty, and adherence to the "rules of the game." Merton contended that American society greatly over-emphasized the goals (money) to the detriment of the means to achieve these goals (hard work, honesty). Thus, people adopt a multiplicity of behaviors in order to secure the overriding goal of the attainment of wealth. Merton devised a typology of behaviors used to adapt to this unequal emphasis on goal rather than means.

Briefly, Merton's five types of behavioral adaptation are conformity, innovation, ritualism, retreatism, and rebellion. Conforming behavior occurs when there is strict adherence both to societal goals and means to achieve these goals. One works to achieve success (wealth) by approved middle class values (such as hard work, frugality, etc.). Innovative behavior signifies the same allegiance to the goals without use of socially approved means. The ritualistic category refers to the behavior of those who reject the goal of attaining wealth but who nonetheless follow approved cultural norms. Low level career bureaucrats and civil servants typify the category of people who have accepted that wealth will never befall them but who nonetheless conform. Finally, retreatism characterizes those who have rejected both culturally approved means and ends. Vagrants, chronic alcoholics or drug addicts, and hobos all signify people who neither follow the approved

means nor aspire to wealth. Rebellion is typical of those who reject both culturally approved means and ends and instead substitute their own means and ends. For instance, political or religious activities may both reject the attainment of wealth as well as middle class means for achieving it.

Substitute values might be violence as a means to achieve a socialist society or spiritual and transcendental meditation to achieve a particular level of consciousness. This category is used to explain political crimes committed against society or groups within it.

In anomie theory as put forth by Merton, it is the innovative behavior typology which attempts to explain most crime, especially among the lower classes. The lower class is restricted in legitimate opportunities to attain wealth. Thus, many turn to street crime to provide the wealth they cannot otherwise achieve. In the case of arson, several types can be explained by innovating behavior. Arson committed by welfare tenants in order to relocate, by building strippers to sell copper and brass, and perhaps by small businessmen who find themselves stuck with an unprofitable building or store or who actively engage in premeditated arson for profit schemes can all be understood in the light of innovating behavior. With legitimate access to approved means closed or at least difficult to utilize, these people set fires in order to obtain better housing or money.

Yet, other types of arson which occur primarily in the lower class cannot be understood through Merton's categories. For instance, arson for revenge, jealousy or vandalism --

perhaps the most common type of arson committed among the lower class - is not used to obtain wealth. The primary benefits for someone who commits arson for revenge or jealousy may be only psychological, while vandalism arson is almost entirely non-utilitarian. Obviously, there are other goals, aside from the attainment of wealth, which motivate people to commit these forms of arson. These types of arson are not a conscious reaction against middle class values. Indeed, anomie theory can be criticized for its failure to explain non-material and non-utilitarian types of criminal activity. While Merton's innovative typology can be used to explain some types of lower class crimes, these must (by the very nature of innovation) be for profit. Thus, some arson for profit as well as robbery, burglary, auto theft, and assorted con games may be explained by innovative behavior. However, arson which is not committed for profit, along with crimes such as assault and vandalism, fall outside the theoretical scope of anomie theory.

Perhaps the most serious drawback for anomie theory, however, is its failure to adequately account for white collar crime. Members of middle, upper middle, and even upper class professions either commit, commission, or through indirect action are responsible for different kinds of arson for profit. Large landlords, businessmen, real estate speculators, contractors and developers may be among those who commit arson and other crimes for profit. In these cases, however,

legitimate means for attaining wealth have not been blocked. On the contrary, in many cases, the wealth has already been achieved. Why, then, do people who have the goals, or open access to the means of attaining them, commit crime for profit? Perhaps the goal in American society is not wealth but more wealth, not need but greed. It may be that Merton's goal of attainment of wealth is too simplistic and static. Studies of people's attitudes about their income have revealed that people say they would be happy if they just had a little more income, regardless of their current income. There seems to be no finite limit for the attainment of wealth in American society, and corporate and white collar crime would seem to confirm this.

Regardless of the particular shortcomings of anomie theory, it is clear that it can only explain a portion of arson. This problem may or may not be taken as a serious shortcoming. For Merton, anomie theory and some of his other theories are theories of the middle range. Anomie theory may be capable of explaining a portion but not the totality of human behavior. In crime, anomie theory may explain only certain types of lower class crime but, as a theory of the middle range, that is its only intent. As Merton explains:

Of course, distinct theories often involve partly overlapping concepts and postulates. But the significant fact is that the progress of these disciplines consists in working out a large number of theories specific to certain types of phenomena and in exploring their mutual relations, and not in centering attention on 'theory' as such.

. . . . .

To concentrate solely on the master conceptual scheme for deriving all sociological theory is to run the risk of producing twentieth century equivalents of the large philosophical systems of the past, with all their suggestiveness, all their architectural splendor, and all their scientific sterility. 21

Theories of the middle range, then, are by nature limited and should be complemented with other theories of the middle range which can add to their explanatory power. This goal of middle range theory is the opposite of the goal of theorists like Talcott Parsons or Karl Marx, both of whom strove for a single monistic theory which would encompass the whole of human behavior.

Without debating the merits of either position, it is apparent that any criticism of middle range theories of criminality on the grounds that it only explains some but not all crime is illogical by definition. Anomie explains only some types of lower class crime which are committed for material profit. It must be supplemented by other theories.

One school of thought which is not middle range in orientation but which does seek to explain all crime and deviant behaviors is Sutherland's differential association. In essence, differential association examines how behavior, in this case criminal behavior, is learned. The theory consists of nine basic tenets:

- 1) Criminal behavior is learned.
- 2) Criminal behavior is learned in interaction with other persons in a process of communication.
- 3) The principal part of the learning of criminal behavior occurs within intimate personal groups.
- 4) When criminal behavior is learned, the learning includes a) techniques of committing the crime, which are sometimes very complicated, sometimes very simple; b) the specific direction of motives, drives, rationalizations, and attitudes.

- 5) The specific direction of motives and drives is learned from definitions of legal codes as favorable or unfavorable.
- 6) A person becomes delinquent because of an excess of definitions favorable to violation of law over definitions unfavorable to the violation of law.
- 7) Differential associations may vary in frequency, duration, priority, and intensity.
- 8) The process of learning criminal behavior by association with criminal and anti-criminal patterns involves all of the mechanisms that are involved in any other learning.
- 9) While criminal behavior is an expression of general needs and values, it is not explained by those general needs and values, since noncriminal behavior is an expression of the same needs and values. 21a

Unlike anomie theory, differential association basically tries to explain all crime, from the most calculated white collar fraud to the spontaneous irrational act. Any theory which tries to account for all criminal behavior is open to the charge of being too general and untestable. This criticism definitely applies to differential association. The most common criticism of the theory is that its basic concepts of "favorable or unfavorable" definitions of law or "intensity and frequency" of criminal associations cannot be operationalized and therefore are untestable.<sup>22</sup> Another common criticism is that the theory ignores personality traits such as aggression, acquisitiveness and sexual impulses in criminals by ascribing all conduct to social interaction.<sup>23</sup> Similarly, the theory has been attacked for ignoring the concept of free will and the reasons for some people committing crimes while others in similar circumstances do not.<sup>24</sup>

Cressey has attempted to answer these criticisms by

claiming that an attack of the theory for being too abstract is merely a proposal for further research; abstraction, in and of itself does not constitute a valid criticism of the theory. Moreover, personality traits and the concept of free will are both learned behaviors in and of themselves. As such, they can be incorporated into differential association theory.

Cressey's defense notwithstanding, differential association theory seems to raise more questions than it answers. For several types of crime, however, it appears to fit available data rather well. In the case of arson, for instance, differential association theory may account for vandalism or "play" arson. This type of arson is generally committed by young people who must learn from others the particular skill involved in setting fires. Though no data is available on this particular topic, it seems reasonable that laws making fires in vacant buildings illegal are regarded as meaningless or irrational by those who engage in this type of arson. The sheer number of fires in vacant buildings indicates that this activity is relatively common, especially in New York City's poorest neighborhoods. Thus, the process of youngsters learning to commit this type of arson, simply by living in close proximity to where the fires are routinely committed and in day to day interaction with other youngsters who commit arson, seems a natural process for "recruitment" into this type of crime. As Cressey states, "In an area where the delinquency rate is high, a boy who is sociable, gregarious, active, and athletic is very likely to come into contact with

other boys in the neighborhood, learn delinquent behavior patterns from them, and become a criminal..."<sup>25</sup> Vandalism and building stripping arson would both seem to fit the pattern of interaction and learning outlined by differential association theory.

It seems more difficult to explain other kinds of arson by differential association theory. Revenge or jealousy arson is frequently committed spontaneously and irrationally, indicating the absence of any systematically learned behavior. Proponents of differential association theory would claim that in these cases, there has been a learning process which may ultimately dictate a violent response when one is wronged or betrayed. It does, however, appear much more difficult to explain spontaneous types of arson given the nine tenets of differential association theory. By attempting to explain psychologically irrational or impulsive behavior with differential association theory, the theory is stretched to its breaking point. One would have to say that all behavior is learned. Thus, any exhibited behavior can be explained by differential association. In this case, the theory would be explaining all by explaining nothing.

Differential association may have some limited applicability in explaining arson for profit. There are, for example, landlords who have committed arsons either actively or passively who have had little if any contact with other arsonists or criminals. These landlords, though, may belong to groups or associations or have friends who

sympathize with the plight of landlords' problems. Unruly tenants, regulations, or inflation may all be regarded as unfair problems which inhibit landlords' profit-making potential. In these groups and interactions, actions such as milking buildings and setting arsons may be discussed as viable and legitimate options, either implicitly or explicitly. The frequency of these contacts, the negative views taken about relevant housing laws, and discussions of criminality may all be adequate to convince a landlord through his associations to commit arson for profit.

This is, of course, a fictional scenario. Given the nature of landlord arson for profit, such a series of events does not seem improbable. While there is no data on landlords who commit arson for profit and certainly none which could confirm or deny the applicability of differential association to this kind of arson, the potential usefulness of differential association theory for explaining arson should be further examined. Differential association may help to explain why some businessmen who are in desperate financial trouble opt for arson while others utilize legitimate strategies for coping with economic problems.

The obvious problem, however, with using differential association theory to explain arson or other crimes is the difficulty of ever empirically validating the theory. If one did, indeed, hypothesize that differential association explained why some landlords and not others committed arson for profit, verification would require a monumental effort. One would first have to find a sample of landlords who committed

arson and then, in order to determine the frequency and type of all their particular associations, conduct in-depth research into every landlord's background. This massive data would have to then be compared with similar data from a control group of landlords in similar economic circumstances who did not commit arson. Thus, to prove that differential association is responsible for any specific crime, especially arson, is just about impossible. As Cressey himself states;

Yet the statement of the differential association process is not precise enough to stimulate rigorous empirical tests, and it therefore has not been proved or disproved. This defect is shared with broader social psychological theory. Although critics agree, as we have indicated, that the differential association statement oversimplifies the process by which normative conflict "gets into" persons and produces criminality, an acceptable substitute that is consistent with the principle of normative conflict has not appeared. 26

While differential association tries to account for crime through a theory of learning or cooperation among criminals, two other predominant schools of thought utilize notions of conflict and oppression to explain crime. Conflict and Marxist explanations of crime are frequently used interchangeably since both have as their basis a dichotomy between those who do or do not have power within society. However, the basic tenets of conflict theory would be applicable to any social system whereas Marxist theory concentrates on forms of inequities and oppression found in advanced capitalist societies.

#### Conflict Theory

Ever since Dahrendorf<sup>27</sup> responded to proponents of

functionalist theory by offering a model of society which was based on constant conflict and accommodation, a spate of writers have elaborated on how conflict between organized and non-organized groups is responsible for crime.<sup>28</sup>

Conflict theory is generally based on the notion that modern societies are organized into a number of groups or segments which have widely divergent or conflicting values, norms, behaviors, goals, or subcultures. Degrees of organization and access to political and economic power vary among those groups. The better any group's political or economic position, the more influence it can exert on public policy in its own behalf. A number of theorists have elaborated on these propositions. Perhaps the best known proponent of the conflict theory of crime causation has been Richard Quinney (though his views on the subject have changed radically in the last several years). In The Social Reality of Crime, Quinney notes that crime is a label bestowed upon certain types of behavior by those groups which have the most political power in society. The behaviors defined as criminal are usually found more commonly among the groups or segments without power. Criminal behaviors usually conflict with the interests of those groups which are in power. Crime and its enforcement, then, is a set of definitions of those behaviors which pose the greatest threat to those in power. The definitions of what constitutes crime as well as the degree of the enforcement of criminal law is an ongoing and dynamic process, as different

groups or segments in society gain or diminish their power.<sup>29</sup>

Another variant of conflict theory is Vold's theory of group conflict. Whereas Quinney's theory applies to all segments of society, no matter how loosely organized, Vold's view of group conflict only concerns conflict between highly identifiable and organized groups. For instance, labor unions, corporate management, gangs and the Moral Majority would all be examples of organized groups fighting for power in American society. The degree of success in this fight would be measured by each group's ability to shape public policy and criminal law in its own interests. However, very loosely organized groups such as single female Hispanic heads of households are not included in Vold's theory since there is virtually no degree of organization among the people who make up the group. For Quinney, however, this "segment" of people would be included since they may share similar cultural values and a common class position within society.

This difference indicates that Vold's paradigm is a theory of the middle range while Quinney's explanation of crime is closer to grand theory. Whereas Vold's conflict theory can explain labor vs. management violence, it cannot take into account an isolated incident of an irrational and spontaneous violent act by a single female Hispanic head of a household. Quinney's theory is designed to explain both the former and the latter. A single female Hispanic head of a household is part of a segment of society, albeit a highly

unorganized one, which experiences racial, sexual, and class prejudice and generally share a common culture. Even an irrational response by a member of society can be explained by similar societal and psychological pressures created by more powerful organized groups within society.

Using arson as an example, each of the foregoing strains of conflict theory has its strengths and weaknesses in accounting for the volume and type of arson. Arson is commonly used by disgruntled groups. For instance, labor unions on strike, white supremacists facing a growing number of blacks in their community, rioting minorities angered by a particular set of governmental actions, gangs competing with each other for turf, a revolutionary group such as the FALN, may all use arson to achieve their political or economic ends. An analysis of any of these situations will reveal groups which are either in conflict with each other, the state, or both. Their use of arson can be explained by their desire to intimidate, exert control over, or express their frustration toward another or a number of competing interest groups. Both Vold's and Quinney's conflict theory can further understanding of these types of arson.

The explanatory power of Vold's group conflict theory ends at this point, however. In attempting to account only for violence among organized groups and the interest groups which run or have power within the state, Vold's theory is one of the middle range. Crimes which are committed by individuals who are not part of an organized group or crimes

of passion and spontaneity are not accounted for by Vold. In the case of arson, then, group conflict theory is inapplicable to a large portion of arsons. Although labor unions, gangs, and organized crime certainly use arson for various reasons, arson is committed by a variety of people who are not members of organized groups. Individual landlords, shopkeepers, and tenants also set arsons. Their reason for doing so fall outside the scope of group conflict theory.

Quinney's paradigm, however, attempts to take into account all crime, regardless of the identity or motivation of the perpetrator. Quinney has written that crimes committed without an explicit goal can be accounted for by his theory. People who do not appear to be a member of any organized group but who nevertheless commit crimes are still part of society. Consequently, they share some common values, norms, ideology and life situations. Though not organized into a group, they may represent a threat to the groups which control the state and are thus subjected to different forms of oppression by the state. The state then criminalizes many responses to this life condition which protects the state's interests and keeps these "out" groups relatively powerless. Within this theory, Quinney would have found the disproportionate amount of crime committed by poor minorities in the nation's large cities easy to explain. Though not part of an organized group, minorities may share the same life situation, goals, and frustrations. Thus, a seemingly "irrational" crime such as setting a fire resulting from an argument would actually

be an understandable response by an alienated member of a segment of society who has little political or economic power. This "irrational" act is then seen as a threat to the dominant interest groups in society.

Quinney's theory, then, is broader in scope than Vold's. Yet, deficiencies are not entirely absent from his exposition. What about crimes, in this case arson, committed by well-off developers, builders, landlords, and merchants? In many cases, the "criminals" are members of groups which already wield tremendous power, those who help to define Quinney's "social reality of crime." They may be members of conservative political clubs or parties and belong to other organized groups for which the omission of a violent felony is hardly condoned. They are not oppressed, poor, or part of a group or segment which presents a threat to the state. What Quinney's and Turk's conflict theory<sup>30</sup> can explain in these cases is why these particular criminals (or arsonists in this case) are not caught. Because they do belong to groups which define crime, white collar arson becomes the hardest to detect or to prosecute. With limited resources, it is simply impossible to catch members of the state's most powerful groups who decide to become criminals. Because they make the rules, the criminal games these people play will be the most difficult to halt. But conflict theory cannot answer the question of why they play the game in the

first place. In this respect, conflict and anomie theories have the same deficiency.

### Marxist Theory

Marxist thought has been used by some criminologists to explain why all types of crime are committed by people of all classes.<sup>31</sup> Though Marx himself never wrote extensively about crime, his theory of class formation and relative position to the means of production can be used to explain criminal behavior in capitalist society.

For Marxist criminologists, it is the precise nature of the capitalist system which is responsible for crime. After his conversion to Marxism, Quinney outlined six general rules which can generally but superficially summarize Marxist criminology:

1. American society is based on an advanced capitalist economy.
2. The state is organized to serve the interests of the dominant economic class, the capitalist ruling class.
3. Criminal law is an instrument of the state and ruling class to maintain and perpetuate the existing social and economic order.
4. Crime control in capitalist society is accomplished through a variety of institutions and agencies established and administered by a governmental elite, representing ruling class interests, for the purpose of establishing domestic order.
5. The contradictions of advanced capitalism -- the disjunction between existence and essence -- require that the subordinate classes remain oppressed by whatever means necessary, especially through the coercion and violence of the legal system.
6. Only with the collapse of capitalist society and the creation of a new society, based on socialist principles, will there be a solution to the crime problem.

Whereas conflict theorists would contend that groups which are in power will always define and enforce crime differentially regardless of the political or social system, Marxist criminology specifically blames capitalist society. It is capitalism specifically which requires a large pool of poor or unemployed workers, or a lumpen proletariat. Most violent crimes will be committed in these groups since capitalism alienates and demoralizes labor, pits workers against each other for a limited number of jobs, and keeps a large segment of the population in abject poverty. People commit crimes out of anger, frustration, stress, or a material need to survive. The proletariat, also, is the group which presents the greatest threat to capitalism, resulting in their oppression under supposedly "objective" criminal laws. That people who live in these conditions commit "senseless" or irrational crimes should actually be seen as rational since they are only reacting to a life situation specific to capitalism. Vandalism, jealousy, revenge and other "irrational" types of arson, then, can all be understood as a response to a pathological social and economic system. Taylor, Walton and Young give an example of lower or working class crime which can be explained by a Marxist analysis of the state.

A working class adolescent, for example, confronted with blockage of opportunity, with problems of status frustration, alienated from the kind of existence offered out to him in contemporary society, may want to engage in hedonistic activities (e.g., finding immediate pleasure through the use of alcohol, drugs, or in extensive sexual

activities) or he may choose to kick back at a rejecting society (e.g., through acts of vandalism). He may also attempt to assert some degree of control over, for example, the pace at which he is asked to work....or the ways in which his leisure interests are controlled. 33

Thus, these Marxist criminologists are able to attribute vandalism, drug abuse, and labor violence to the intrinsic nature of the capitalist state. By extension, it is easy to understand how a Marxist criminology would explain arson committed by building strippers, vandals, welfare tenants, etc.

Along with creating an underclass in which crime will be rampant, capitalism also instills a pathological desire to make money and maximize profits. This might also explain crime committed by members of the middle and upper classes. Arson committed directly or indirectly through the actions of large landlords, businessmen, and developers can be understood in terms of the desire to constantly accumulate wealth. The same drive and desire multi-national corporations exhibit to grow and expand is similar to the motivation of someone who already has money but will commit a crime to get more. Where anomie theory has trouble explaining why successful people commit crimes, Marxist criminology works on the premise that some is never enough. Within Marxist theory, this is a structural and not haphazard feature of capitalism. Since there is no finite limit on the amount of wealth or power one can be content with under capitalism, members of the middle and upper class also commit crimes, albeit of a somewhat different nature than the lower class, in order to obtain more wealth than they already have.

Crime here is usually of the white collar variety, i.e., embezzlement, fraud, or illegal banking practices. Since these crimes rarely result in violent acts and are perpetrated by the most powerful segments of society, their enforcement is negligible. Although white collar crime may be rampant and more costly in pure material terms, it is far less of a threat to capitalism. In fact, it is intrinsic to its perpetuation. White collar crime is perceived as less threatening than street crime, resulting in differential enforcement and sanctioning of violent crime as opposed to middle or upper class crime.

Arson for profit can be viewed as an effort by marginal entrepreneurs as well as well-to-do businessmen to stop losing money (an anathema in capitalism) or as a way to make more money. When, for example, a large landlord milks his properties and reaps windfall profits through the misery and suffering of his low income tenants, it is he who makes the money and his tenants who pay the social costs of his profit. In fact, if the tenants set fire to the building out of anger, it is they who will probably be arrested, not the landlord. This scenario is totally compatible with a Marxist theory of crime which stresses the constant search for profit at any cost (the landlord), the violent and appearingly irrational nature of lower class crime (the tenants), and the differential nature and enforcement of criminal law (the tenants being arrested and the landlord escaping).

Both Quinney and Taylor, Walton and Young conclude that crime itself will be eradicated in a society based on socialist principles.<sup>34</sup> Their rather glib propositions point to the main weakness in Marxist criminology. In not taking into account the nature of modern industrial society, with its ubiquitous bureaucracy, high population density, constant migration, and watered down notions of community, these criminologists ignore factors which would exist in any modern social system. These factors would exist in any modern society regardless of the particular social system. Given that these variables also have a relationship to crime, especially to violent crime, it is difficult to imagine a society completely free of crime. In this respect, Durkheim was also astute when he described in The Rules of Sociological Method the integrative function served by crime in all societies. Vold has noted these criticisms. He writes that "the question of how conflicts between segments of society can be fairly and equitably resolved is not limited to one type of society, and will not be resolved by the overthrow of a particular social order."<sup>35</sup>

The problem with trying to explain arson through one criminological theory is that arson is simply a microcosm of all human behavior. Given the variety of people, classes, rationales, and methods used to commit arson, a full explanation of arson would be tantamount to explaining the full range of human motivations. Other crimes, shoplifting or securities

fraud for example, involve a more homogeneous population and set of motives which may be conducive to a particular criminological theory. Arson does not. Arson contains within it a large variety of crimes for which arson itself is simply a tool, an instrument for carrying out a plan of action.

There is, for example, no one particular crime called gunning or knifing. People use guns for an infinite variety of reasons. So, too, do they use arson. Love, hate, fear, stress, anger, frustration, anomie, greed, and demoralization are all intimately tied into why people resort to arson. Any theory of arson would have to include both the greed of a powerful landlord who uses arson to make more money and the violent acting-out of someone living a miserably poor existence.<sup>36</sup>

The criminologist, therefore, has two options. He can treat arson as an all-encompassing crime, or he can separate arson into its many varieties and develop a theory for each subset of the crime. If he does the former, only grand theory will suffice. This "grand" theory would have to explain why certain people and segments of society commit different types of arson. It would also have to examine the social and political conditions which give rise to the desires, motivations and definitions of crime. This is a tall order and to date no such theory has been forthcoming. The closest approximation to such a theory, given the present state of criminology, would be a combination of Marxist and other conflict

theory. The creation of a large demoralized underclass, the constant desire for profit, the tremendous political and economic inequities of capitalism, and the differential definition of criminal law can be seen as antecedent conditions for the commission of a large amount of contemporary crime.

That most violent crime is committed by poor people against poor people and disproportionately by minorities. That white collar crime (which, as with arson for profit, indirectly results in as much physical destruction and violence as street crime) receives little attention from the criminal justice system, and that the incidence of stranger to stranger violent crimes are committed almost solely by the poor, are phenomena entirely understandable, given a Marxist or neo-Marxist critique of the capitalist state. The fact that current neo-Marxist thought is flawed because it does not take into consideration other variables which may have a bearing on crime, and that some theorists may glibly maintain all crime will be eradicated in a socialist state, does not minimize its usefulness. In fact, in his review of Marxist criminology, Vold attacks the theory for stating the latter proposition but never faults any of the analysis of crime under capitalism. This was the case with the arsonists examined earlier. Their poverty, limited opportunities, and lack of mediating elements with which to disperse their stress, can all be understood within a Marxist analysis of capitalism. The features of capitalist society

will often create the social and economic conditions under which crime becomes an option and outlet for large groups of people

A thorough Marxist criminology would also have to explain why some groups of people in similar life situations commit crimes while others do not. In this respect, current Marxist criminology is also deficient. But utilizing other theories of crime within a Marxist framework might overcome some of these deficiencies. For instance, differential association, conflict and Freudian theories could all be used within a Marxist perspective. Many groups or segments within society do fight for political and economic power within capitalist society; some people learn to act and rationalize their actions in particular ways, depending on whom they associate with; and early childhood experiences and interpersonal dynamics do play a role in many types of crime. These insights of other theories can all be used to enhance the explanatory power of a Marxist theory of crime. Capitalism, for example, certainly gives rise to the conditions which make arson attractive to businessmen, landlords, tenants, junkies, revolutionaries, and gangs.

Not all people in particular groups commit crime or set arsons. Why? Perhaps the conflict perspective can illuminate which groups are relatively powerful at any given time and what other options are open to them in their constant

struggle against each other or the state. Once this analysis is performed, the question will still remain as to why some people in a group likely to commit arson do not do so. Perhaps a further analysis using differential association will reveal which people are more likely to know about and rationalize the use of arson. Even among this group, there will be some who use arson and others who do not. At this point, perhaps a more psychoanalytic approach to this population may reveal the answer.

Though obviously schematic, the preceding scenario is meant only to illustrate that several theories of crime causation are not necessarily incompatible. They can be used in conjunction to further refine a Marxist theory of crime. In the case of arson, a synthetic use of currently extant theory is essential if one is trying to explain all arson. No single criminological theory of the middle range will suffice. The criminologist may decide simply to explain one specific type of arson but, in the long run, this will be an exercise in futility. Attempting to analyze any specific type of crime without concomitantly examining the larger social environment in which it occurs will result in an explanation of a crime which is unconnected to the world around it. Following this path will lead to hundreds of explanations for an infinite variety of crime.

The "advantage" of creating a theory capable of explaining arson is that if arson can be explained, all crime will come under its rubric. Several of the middle range and grand theories discussed in this chapter are incomplete or defective. Some have explanatory powers which others lack.

They are not all incompatible with one another. Using Marxist criminology as a general framework, aspects of social disorganization, differential association, conflict, Freudian and even biological theories of crime can all be synthesized and used to enhance Marxist criminology. It is the test of criminology to make this synthesis. Using different theories to explain different crimes or aspects of a single crime is fruitless. Contrary to Merton's fear, grand theory does not have to be so broad as to be futile. It must have the power to go from the systematic to the specific. This chapter has suggested that using Marxism as a base, a synthesis should be made with the compatible strong points of other theories. Since arson encompasses almost all the motives and opportunities of all crime, it is further suggested that if such a synthesis of theory can be made to explain arson, it can explain all crime.

Chapter 7.

Footnotes

1

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CHAPTER 8: WHAT CAN BE DONE?

More than any other crime, arson is susceptible to the whims and actions of the law enforcement bureaucracies charged with its identification and investigation. With almost no resources devoted to these tasks, the New York City Fire Department was forced to create a method of investigation which systematically undercounted arsons and especially arson for profit. A huge workload and a shortage of investigators resulted in an organizational strategy of prioritizing some and simply not responding to other investigations. Superficial investigations, arsons to which there were no response and the lowest arrest rate of any violent felony all resulted in a systematic ignorance of and apathy toward arson by the general public, government officials, journalists and criminologists. These factors were responsible for a disproportionate underestimation of the amount of arson for profit being committed throughout the city. With investigative responses geared only to the most obvious arsons, and with the closing of investigations which did not result in an immediate arrest, arson for profit became the most unidentified and profitable crime one could hope to commit.

Ignorance eventually led to what would have been a perfect case study for Quinney in his work, The Social Reality of Crime. Arson was whatever the law enforcement organizations charged with its enforcement defined it to be. Statistics on arson incidence and motives for committing the crime went unquestioned; they were the "reality" of arson. Since the state

is so intimately tied to the definition of the problem, and yet in this particular case showed little concern about arson, a patently false reality of the crime was created, tolerated and encouraged by government.

If not for a series of startling events, this pattern which existed for years would still be prevalent today. The Bronx Social Club arson of 1975 which killed 25 people, the televising of arson fires during a 1976 national baseball playoff, the blackout riots of 1977 and the Waldbaum arson of 1978 which killed 7 firemen, all put a tremendous amount of public and political pressure on officials to do something about arson. It was only then that new bureaucracies were created to deal with the arson problem.<sup>1</sup> The organizational response by law enforcement agencies to arson, the bureaucratic wars between the Fire and Police Departments, and the almost complete lack of any reliable information on arson only became an issue for the New York City government following these events. When it did become an issue for several government agencies to address, problems of competing bureaucratic interest played an important role in the dynamic of how policy was created, implemented, and administered. The conflicting goals of arson prevention and investigation, and of protecting and expanding bureaucratic turf, tempered and at times hampered the city's effectiveness in dealing with the arson problem. Each organization involved in the city's fight against arson had its own agenda for controlling arson as well as other interests which conflicted with their stated goals of arson prevention. Attempts to create a coordinated approach to the arson problem highlighted the internal contradictions within

agencies as well as the internecine rivalries between agencies. The threat of loss of responsibility caused bureaucracies to act in a way which would protect their turf as opposed to their stated goals of arson prevention and investigation.

The onus is hardly on government policy alone for the widespread incidence of arson, and for public ignorance about it. The insurance industry must bear a large portion of the blame for encouraging arson for profit. Insurance companies use insurance to maintain cash flow, not to make profit. Much of their underwriting can be reinsured again and again to cover large losses. There are no real economic incentives, then, for insurance companies to spend money to combat arson or arson for insurance fraud. Failure to pre-inspect properties before they are insured, blindly accepting large groups of properties for insurance from brokers, failure to perform regular property inspections, and active litigation of only a small portion of suspected arson cases have created a situation which invites insurance fraud. Moreover, all insurance companies face tremendous pressure to pay out quickly to their insureds. Indeed, there are a number of consumer oriented insurance laws which mandate a payout within 30 days of the claim.<sup>2</sup> The competition among insurance companies for paying immediately after a claim further exacerbates their susceptibility to arson for insurance fraud. In the last several years, insurance companies have taken more of an active public interest in arson prevention, although it takes the form of underwriting public and private arson prevention

programs. While this may be better than nothing, it does not begin to get at the heart of a situation which allows the commission of arson for insurance fraud with almost complete impunity. Insurance companies have staunchly refused to alter their basic underwriting, claims, inspection and evaluation practices. The reasons they give for this refusal are that instituting new procedures to screen, inspect, and possibly litigate claims will result in large expenditures of capital which would then have to be passed on to the consumer. Additionally, no company by itself will volunteer to "get tough on arson" because they fear that their insureds will simply move to another company which will not have the same bothersome regulations.

The lack of governmental commitment to understanding and investigating arson combined with the insurance industry's lax standards and operating procedures allowed arson -- and especially arson for profit -- to increase dramatically during the 1970s. Though arson for profit comprises a significant portion of all arson, this is not reflected in the population of arsonists who are arrested, convicted, and sentenced to felony time. A survey of arsonists who are serving the longest sentences reveals that only 17% (4) are clearly responsible for what can be considered some type of arson for profit. Of these, however, 13% (3) were simply torches who were paid to set the fire, 4% (1) was a desperate businessman whose small commercial enterprise was failing and the last was a welfare tenant who was attempting to burn his run down building to get relocated into better housing. There were no landlords

who milked and neglected their buildings, no property owners who overinsured their property and burned it, no owners who emptied their buildings through arson to qualify for federal and state housing programs, no landlords who burned out their tenants to convert a building from rentals to cooperatives, and no members of organized crime who committed systematic and sophisticated arson for profit schemes.

Primarily, the convicted arsonists were people who set fires which were directed at their family members, friends or acquaintances. Many were drunk or high when setting a fire. Rather than simply classifying the motives of these arsonists as "revenge" or "jealousy" fires, it is necessary to examine the general life situations of the arsonists involved. Most of them lived in conditions which produced constant stress, whether that condition was residing in poverty stricken neighborhoods, being largely unemployed, facing discrimination as a minority member, with no job skills and sporadic work record, or never having finished high school. Every person interviewed had several of these stressful symptoms. Moreover, each arsonist (except for those who committed arson for menial profit) had an argument with the person to whom the fire was directed, either a spouse, lover, friend or sister. These acquaintances are seen as one of the strongest mediating factors in coping with the life stress under which the person lived. The relationship with wife, girlfriend, family, or friend provides an ontological anchor in an existence where stress is ubiquitous. A fight with someone who plays this key role can cause an intolerable degree of stress since there are few if any other comforting and non-stressful aspects of the person's existence.

Striking out through arson at the person who causes this extreme stress is a way for some people to mediate their life problems. Seen in this light, these people could have also assaulted someone, committed suicide, or abused their children. Though they chose to commit arson, the arson itself is not of primary importance in these cases. They could have done a number of other things to deal with a situation which was characterized by a high degree of stress and anomie.

Only a psychoanalyst can answer the question of why a particular individual used arson as opposed to another form of release. However, in these cases, the arson is almost incidental. Unlike sophisticated arson for profit schemes in which the arson itself is essential to the crime, arson was used in these cases to express an emotion. The arson was a mere by-product. This essential difference has numerous implications for how "irrational" arsons and other violent crimes committed under similar circumstances are studied by social scientists. The initial motivation behind the commission of these arsons (anger or revenge) or other crimes such as assault or wife and child abuse, should serve only as a starting point for research. The motivation should not be used to try to "explain" why the crime was committed. This has been the basic and systematic fallacy underlying almost all current research on arson. The fact that a strong emotion preceded the crime does not explain the crime. It is the life conditions which made possible the decision to commit arson (or any other crime which is the result of stress) that should be the primary concern of the criminologist. Stress,

in all its forms and manifestations, must be examined more closely as a cause for crime, especially non-profit motivated and spontaneous acts of violence. To simply say a crime was committed for revenge is to obscure all meaning behind the genesis of the act.

The analysis of the motivations and demographic characteristics of those convicted for arson was followed in the dissertation by an examination of the different criminological theories of crime causation. Theories which were discussed included classical, Freudian, biological, social disorganization, anomie, differential association, conflict, and Marxist explanations of crime. Since arson encompasses such a wide range of motivations as well as an infinite variety of people who commit it, each theory is capable of explaining different types or degrees of arson. No single theory, however, seems to be able to explain the entirety of the crime of arson.

Marxist criminological theory appears to have the most explanatory power of all the theories examined, Marxism provides a rigorous economic analysis of the capitalist state. It describes a large underclass, almost permanently or sporadically unemployed and poverty stricken. The Marxist analysis offers a systematic explanation of the life stress experienced by a large and relatively homogeneous group. General social conditions form the groundwork for the types of life stress discussed in this thesis, and confirm the life situation of most of those who are convicted for arson. Moreover, Marxist criminology also takes into account

the behavior of large entrepreneurs or capitalists who may use arson to realize greater profit. Profit and capitalism are inseparable, and the need for accumulation can explain the motivations and actions of the middle and upper classes who use arson for profit. Likewise, the actions of small landlords or businessmen who commit arson after finding themselves in a hopeless financial situation are understandable using a Marxist theory of crime. Becoming a financial success and accumulating financial wealth is, as both Marx and Merton wrote, a driving force in American capitalist society. Once attained, the thought of losing it can be terrifying, leading to arson for profit as a "rational" last resort for a person in this situation. The general material conditions which create a large underclass, the constant drive for profit, and the fear of economic failure are all, as Marxist theory tells us, inherent under capitalism. James Brady, although not writing as a Marxist, nonetheless exhibits a similar orientation in an excellent article on arson and the urban economy. According to Brady, the "...routine profit making practices of banks, realtors, and insurance companies lead to the processes of abandonment, gentrification, and neighborhood decline which destabilize urban communities and provide the context and motivation for several varieties of arson."<sup>3</sup>

In terms of explaining crime, however, Marxist criminology can benefit from the insights of other theories, both radical and non-radical. For instance, differential

association theory has explanatory power at a greater degree of specificity than Marxist criminology in explaining how juveniles band together and learn to commit arson for vandalism or profit. Though Marxist theory may postulate the general conditions which gave rise to ghettos and to unemployed and alienated youth, differential association can work within this framework to further explain the mechanics and the process of rationalization which makes the commission of arson possible.

In a similar vein, conflict theory is also more specific than Marxist theory. It can analyze which particular groups or segments in society have power, and which methods are available for different groups to achieve their desired goals.

In summary, a Marxist or neo-Marxist analysis of capitalism is a useful framework with which to begin to analyze why people commit arson. To strengthen its explanatory power, the incorporation of the strengths of other criminological theories of crime causation is essential.

#### What is to be Done?

Possible solutions to the problem posed by arson can be broken down into two general categories. The first involves several bureaucratic and legal policies which could be implemented. The second would require large-scale social, political, and economic changes which can help

alleviate the causes and motivations for arson (as well as other crimes).

From a bureaucratic standpoint, a number of reforms can be enacted, which will make the state's response to arson more effective. Since arson includes fire, housing and other issues which go beyond the scope of any single bureaucratic agency, arson task forces are an essential component of any government plan to reduce arson. These task forces must consist of members of all relevant agencies. The coordinator of the task force must be at the same bureaucratic level as other city agencies, and must receive strong and immediate backing by the mayor, city manager, and city council on all recommendations concerning arson policy. Since the nature of bureaucracies is to resist reform, these task forces must have the power to implement programs even in the face of adamant organizational resistance. One of the key tasks for such a task force would be to audit governmental policies or programs which may serve as an incentive to the commission of arson. If such connections are found, the task force must have the power to reform the policies with the intent of eliminating any provisions which can encourage arson.

In cities where more than one law enforcement agency has jurisdiction over arson, the arson investigation method must institutionally combine the resources and expertise of the agencies. Bureaucracies must be forced to

share information and work together. Though there will always be organizational resistance to such proposals, New York City's experience demonstrates that it can be successful. In such a combined effort, there should be a single chain of command. The decision about who should control this effort is one which should be made by the task force and is also one which will engender intense organizational bickering.

Governments must allocate money for manpower and training for arson identification, investigation and prosecution. No locality can begin to reduce its arson problem before it is analyzed and responded to by highly trained investigators and prosecutors. Prosecutors, because of the highly technical and unusual nature of arson, should establish specialized bureaus to prosecute arson. In New York City, for example, all the boroughs have these specialized bureaus, except for Manhattan and Staten Island. The fact that Manhattan does not have one illustrates the importance of making known the seriousness and magnitude of the arson problem.

Cities must also encourage and train local community groups in arson prevention. Community involvement in arson prevention is essential. Organizing tenants in high rise buildings, researching and providing information to law enforcement agencies on landlords and businessmen thought to be involved in arson, instituting block watches, and providing technical assistance to financially strapped

landlords and businessmen are all invaluable functions which community groups can undertake. The experiences of community groups such as the People's Firehouse in Brooklyn and the Northwest Bronx Community and Clergy Coalition show that community participation in arson prevention is crucial in reducing arson incidence.<sup>4</sup>

Investigative and prosecutorial resources must be bolstered. A criminal investigation of a sophisticated arson for profit scheme requires a huge investment of manpower. A single investigation can take up to a year and involve a handful of trained personnel to research financial, tax, and corporate records and conduct hundreds of interviews. New York City, which probably has more arson for profit than any other city, conducts only a couple of such investigations per year. If there is any deterrent effect from convicting people for arson for profit, it undoubtedly requires more than one or two convictions per year in a city with over 7,000 recorded arsons. New York City District Attorneys have an abysmal record of attaining criminal convictions for organized arson for profit schemes.

Finally, insurance companies must be forced to amend their underwriting and claims practices. They will not do so voluntarily. Excess and surplus insurance carriers which underwrite the highest risk properties and effectively escape all local regulations which apply to insurance companies must be banned from underwriting fire insurance. The incentives for arson for profit are simply too great when insurance

are based out of state or overseas and have virtually no inspection or enforcement mechanism.

Insurance companies must be required to inspect every property they insure. Currently, it is possible to greatly overinsure a building or even to insure one which does not exist. The experience of N.Y.P.I.U.A. shows that such inspections can be done inexpensively and efficiently.

Insurance companies need to be convinced to more actively litigate claims on fires determined to be arson. One of the greatest deterrents to arson for insurance fraud, absent a conviction for arson, is to deny the insurance proceeds. Again, N.Y.P.I.U.A. has demonstrated that claims can be successfully denied without violating consumer oriented laws to pay out quickly on claims.

Powerful coordinating agencies, an infusion of resources into the identification, investigation and prosecution of arson, community involvement, and insurance reform are all important steps which should be undertaken immediately if arson is to be controlled.

If enacted, concerted public policy would be capable of eliminating some incentives for arson as well as improving the chances for apprehension and conviction of arsonists. Through these reforms, the incidence of arson could be reduced. What the reforms cannot do, however, is eliminate the type of stress seen in the sample of arrested arsonists. It cannot remove the consuming desire for wealth or the economic and political oppression which so clearly

creates an environment with which this type of crime is almost an inevitable correlate. More efficient governmental bureaucracies and more careful scrutiny of the insurance industry would have had no bearing on arsons committed by most of those who were found to be serving the longest sentences for arson.

A blueprint for a society which would not encourage arson will not be presented here. What needs to be emphasized are the limitations inherent in the power of the criminal justice system alone in halting arson. The motivations to commit arson go beyond the scope of any governmental agency or program. Arson for building stripping, for relocation to better housing, as a symptom of a stress-filled existence, or as a manifestation of the elusive search for profit cannot be eradicated by fine tuning the criminal justice system or private enterprise. There is undeniably some proportion of arson which can be prevented by rigorous investigation, prosecution and insurance reform. However, it is only a portion. Those who are concerned either with the destructive effects of arson or with crime in general face a frightening dilemma. Either they advocate reform within agencies of social control, contenting themselves with only minor improvements in an otherwise constant rate of crime. The other alternative is to attempt a more radical solution designed to combat the source of the problem, or those socially-based factors which give rise to the infinite variety of arson motivations in the first place. One thing

that emerges clearly from this study of arson in New York City is that a full understanding of this crime necessitates both reforms and a sober look at the broader socioeconomic context in which it occurs. Neither approach in and of itself can bring about the eradication, once and for all, of this uniquely complex crime.

Chapter 8.

Footnotes

1

The first being the Mayor's Arson Task Force (MATF) in 1977 and the second the New York City Arson Strike Force (ASF) in 1978.

2

Most states have adopted this thirty day law. New York State recently passed a bill which gave insurance companies 60 days in which to pay a claim.

3

James Brady, "Arson, Urban Economy, and Organized Crime," Social Problems, 3 (October, 1983), p. 1.

4

The People's Firehouse is probably the leading and most sophisticated anti-arson community organization in the country.

APPENDIX A. SUMMARY OF THE EXTANT LITERATURE ON ARSON

Government Reports

The bulk of the literature on arson has been published by the United States Law Enforcement Assistance Administration (LEAA). This agency, which has been phased out of existence, was responsible for providing local and state governments with grants to finance law enforcement equipment and manpower as well as to conduct research on particular crimes. The following reports were all researched or sponsored by LEAA.

- Arson and Arson Investigation: Study and Assessment\*

This was the first large-scale government research which centered solely on arson. The report identified local and state law enforcement needs in arson investigation and analysis. It found that most local and state law enforcement authorities did not have the manpower, expertise, or equipment to adequately identify, investigate and prosecute arson. Additionally, the report compiled national statistics on arsons and arrests. Though the methodology employed in gathering these figures consisted only of requesting data from local and state jurisdictions as opposed to any original data gathering efforts, this report was the first to shed light on the national incidence, arrest rate and costs of arson.

- Arson for Profit: More Could Be Done To Reduce It

This report, prepared by the United States

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\*For complete annotated references on the reports and books cited in this appendix, the bibliography attached to this dissertation should be consulted.

General Accounting Office (GAO) in 1978, criticized insurance industry practices which GAO felt provided direct incentives to arson-for-profit. Specifically, the report criticized the Fair Access to Insurance (FAIR) requirement which insurance companies were mandated to form after the 1967 summer riots in major U.S. cities. Briefly, FAIR plans are pools made up by all insurance companies which underwrite insurance in any given state. The amount of money each company is mandated to contribute to the pool is directly proportionate to the percentage of total insurance written in any given state. If, for example, Prudential Insurance Company underwrites 11% of all insurance in Texas, it is required to cover 11% of the FAIR plan underwriting and claims expenses. The purpose of the FAIR plans is to provide insurance coverage to properties which insurance companies consider to be the most arson prone. FAIR plan rates are significantly higher than private company rates. However, unlike private insurers, they generally must insure properties which have been denied coverage by private insurers. The FAIR plan system is designed to insure that no one company will suffer major losses in the event of future outbreaks of urban rioting.

The GAO report criticized FAIR plans for

blindly providing insurance and sometimes gross over-insurance to properties which did not even qualify for the FAIR plans minimal restrictions. For example, vacant buildings and buildings which didn't exist were being underwritten because FAIR plan inspectors never bothered to inspect the properties. Rundown shacks and buildings with major structural and financial problems were being underwritten many times more than they were worth, also due to lack of inspections. These practices, the GAO report claimed, provide easy incentives for people to reap large insurance settlements by burning their FAIR plan insured properties.

- Arson in America

In 1979, the United States Senate's Committee on Governmental Affairs held hearings and issued this report. Testimony was given by law enforcement and insurance industry spokesmen on the nature and extent of arson in America. The hearings generally concluded that arson was a growing, complex, and destructive violent crime which required increased federal involvement. Insurance companies were criticized for lax underwriting practices which contributed to arson for profit.

- Arson: The Federal Role in Arson Prevention and Control

In 1979, the United States Fire Administration

issued the report which was a broad overview of America's arson problem and offered recommendations for federal, state and local government programs to reduce arson. The report presented figures given by state and local fire or police agencies. The bulk of the report outlines various strategies which can be employed in preventing and investigating arson. Forming multi-agency anti-arson task forces was the primary recommendation of the report along with increased training, equipment and coordination of local and state anti-arson personnel. Bureaucratic procedures are outlined for the establishment of task forces.

- Arson Prevention and Control

In 1980, the LEAA issued this report which again presented the scope of the arson problem, along with procedures for developing multi-agency task forces, how to coordinate fire and police department anti-arson activities, how to train various anti-arson personnel, how to conduct community awareness and anti-arson organizing campaigns, and how to build arson data systems which can accurately reflect and predict how much arson exists and where it is likely to occur. The report also summarized arson prevention and control efforts being made in cities throughout the country.

- Enforcement Manual: Approaches for Combatting Arson-for-Profit Schemes

In 1980, this two-volume LEAA sponsored report outlined steps which investigators could employ to define, plan and implement strategies for combatting arson-for-profit schemes. The first volume outlined the scope of the national problem; discussed the various motives for arson-for-profit; identified key actors in arson-for-profit schemes; analyzed organized arson-for-profit schemes; identified key sources of information about arson-for-profit; and summarized anti-arson efforts across the country.

The second volume discusses specific intelligence, investigative, and operational steps which can be taken to investigate those particular schemes. Specific organizational and tactical steps which investigators can employ for each particular scheme are presented in this volume.

In summary, the bulk of these governmental reports provide a variety of empirical data about arson. Though none of these studies attempted any primary data collection (i.e., anything other than simply collecting numbers provided to them by local and state authorities), they are still the best national source of data on arson. They also summarize the prevailing expert opinions on the extent and type of arson occurring in the country. Since they are

written primarily for bureaucrats, they tend to focus on what organizational steps can be taken to fight arson. Rarely, however, do any of these reports challenge or critique the commonly used statistics on arson incidence or the costs of arson. The same figures from the same sources appear throughout the reports and this repetition seems to lend an air of legitimacy to these figures. Additionally, because the reports are geared to local and state government agencies, they are practical tracts and as such fail to examine arson in a broader socio-economic context. They rarely study the causes of arson in conjunction with the origins of other crimes. It should also not go unnoticed that the first of these reports was published at least four or five years after large sections of many major American cities had been significantly ravaged by arson fires.

Psychoanalytic, Psychological and  
Sociological Literature on Arson

Though there are numerous books and articles dealing with the psychoanalytic and psychological characteristics of arsonists, only those studies which are based on a significant sample size will be noted here. Most of these studies tend to be based on patients of psychiatrists or on very small samples of

people who reside in or have been referred to psychiatric institutions. Since this study is concerned with all types of arsons, studies which purport to investigate a representative sample of arsonists will be cited here. Studies which concern themselves with more limited topics such as pre-school children firesetters and relations between juvenile firesetters and their fathers have little bearing on the present study. A fuller listing of many of these studies will be found in the bibliography.

Unfortunately, once these studies are discarded, we are left with only three studies which utilize large samples and attempt to develop classification systems for all arsonists.

#### Pathological Firesetting

The 1951 study by Nolan Lewis and Helen Yarnell is still considered the major psychoanalytical study of known arsonists. The authors studied a total of 1145 case files from the National Board of Fire Underwriters, a national insurance association. They found that pyromania was the most common reason for fire-setting followed by revenge and jealousy. Those who were classified as pyromaniacs had an "irresistible impulse" to set fires, according to Lewis and Yarnell.

The irresistible impulse is "the mounting tension, the restlessness, the urge for motion, the conversion symptoms such as headaches, palpitations, ringing in the ears, and the gradual merging of their identity into a state of unreality; then the fires are set." They also found that the highest rate of arson incidence was for those who were seventeen years old. Half of the Lewis and Yarnell sample had been "in trouble with the authorities with those under 25 usually arrested for property crimes and those over 25 arrested for crimes against the person."

"The Adult Firesetter: A Typology"

In his 1970 study of 138 convicted adult arsonists, released on parole from New York State prisons from 1961-1966, James Inciardi concluded that his sample could be broken down into six behavioral categories: revenge firesetters, excitement firesetters, institutionalized firesetters, insurance claim firesetters, vandalism firesetters, and firesetters who use arson to cover up other crimes. Inciardi found that 50% of his sample committed arson for revenge, about four times greater than the percentage in the Lewis and Yarnell study. Less than 7% committed arson for insurance money. The medium age of the paroled arsonists in this study was 26.

"Some Attitudinal, Psychological and Sociological Characteristics of Incarcerated Arsonists"

This study, by M. Wolford, examined 68 incarcerated arsonists and 57 incarcerated non-arsonists in three Southern states to determine if there was any difference between those convicted for arson and those convicted for other crimes. The study found arsonists to be less educated, have lower IQ scores, and to have committed more property offenses than non-arsonists. No differences were found in age, race, employment background, marital status, number of prior felony arrests, or family stability. The average age for the arsonists in this study was 28, close to Inciardi's finding of 26. The study, unlike Lewis and Yarnell and Inciardi, did not attempt to characterize the types of arsons these arsonists had committed.

"Adult Firesetting Behavior: A Typology"

This unpublished masters thesis by Angelo Pisani examines the cases of arrested arsonists and describes a range of criminal behaviors which result in arson. The main thesis is that arson should be seen not as a single crime but as a weapon which is used in a wide variety of criminal acts.

These four studies, then, represent the major academic efforts at original data collection and analysis of arson cases and arsonists. It is not surprising, given the lack of available data and the difficulties inherent in data collection, that there exists a paucity of

non-psychoanalytic literature on arson.

APPENDIX B. ARSON STRIKE FORCE ANALYSIS OF TEAM POLICING



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ROBERT J. McGUIRE  
Commissioner  
Police Department

LESLIE C. SNYDER  
Coordinator

M E M O R A N D U M

TO: ARSON STRIKE FORCE BOARD MEMBERS  
FROM: LESLIE C. SNYDER *LCS*  
RE: TEAM POLICING EVALUATION

November 15, 1982

On July 27, 1981, the New York City Fire and Police Departments began a team policing project in the northern half of Brooklyn (Brooklyn North). This project paired one fire marshal and one arson detective who would together be responsible for investigating all suspicious fires from cause and origin to arrest. The lead on the forensic aspect of the case and origin was to be taken by the fire marshal. However, he was to be assisted by the detective in all ways, including physical work and the interviewing of witnesses. Once this step was completed, responsibility for the follow-up investigation was to alternate between the police detective and fire marshal.

In May, 1982, the Strike Force issued an evaluation of the first six months of the team policing projects operations (attached). This report updates that evaluation by summarizing the advantages and the problems with instituting team policing and presenting and analyzing up to date statistics on the 3 month old Bronx team policing project as well as for 15 months of the Brooklyn North team policing project and the rest of the City.

#### The Advantages

- I. Team policing combines the respective and complementary skills of police detectives and fire marshals. Detectives have all worked extensively with district attorneys on investigating and preparing criminal cases for trial. They are also familiar with rules of criminal procedure, criminal law and evidence. Fire marshals, in comparison, have an intricate knowledge of fire patterns, firefighting operations, and, from passing a civil service exam and completing a training course, a theoretical knowledge of criminal investigations. Combining the respective skills of the detective and the fire marshal will most effectively utilize the skills of each investigator.
- II. Team policing will result in a coordinated effort between the Police and Fire Departments. All investigations and intelligence gathering will be done consistently and cooperatively. The fire marshal will be encouraged to utilize the Police Department's intelligence network of informants and the Police Department's extensive intelligence information will be combined with Fire Department resources. Combined intelligence gathering is essential in arson because arson for profit is not localized to any particular jurisdiction. Since resources will be pooled, other duplicate and costly functions can be eliminated. For example, the fire marshals and police detectives both have computer hookups to the New York State Identification System data on criminal histories. Only one should be necessary.
- III. Any existing conflict between Police and Fire Department investigators or supervisors will be eliminated with team policing. All the team policing fire marshals and police detectives are working well together on day-to-day investigations, intelligence gathering and major cases.

IV. Since the Police Department will have to commit between 30-40 detectives to a city-wide team policing project, much needed manpower will be added to the City's overall arson investigation effort. These additional detectives will allow the Fire Department to free up enough marshals to create another Red Cap Program, a Major Case Squad, or any special projects, inter alia. It cannot be stated emphatically enough that these additional detectives are not replacing fire marshals, but are an addition to the existing fire marshal force.

V. The statistical analysis, discussed below, also illustrates the advantages of a team policing system. This system will also free up approximately 50 fire marshals currently investigating arsons.

VI. Team policing will formally combine the two investigative agencies in the City with jurisdiction over arson investigation. Since both Departments have and will continue to have jurisdiction over arson, team policing is the only way to have a single unified system of arson investigation in New York City. Of the 14 largest cities in the United States, all have only one method of arson investigation. In these cities, 10 have two departments with dual jurisdiction over arson investigations. Except for Baltimore, which has marshals doing just cause and origins, all have some form of team policing. New York must have one consistent method of arson investigation which institutionally combines the investigators and sources of both Departments.

The following section summarizes the problems which could result from a team policing system. Again, please consult the first evaluation for a more in-depth discussion.

#### The Problems

There are, however, some practical problems with instituting team policing which were outlined in the previous evaluation. Again, reference should be made to the initial evaluation for a greater explication of these arguments. The following are the ones which pose the most potential difficulty.

I. Many fire marshals feel that they may have to carry 75% of the workload in team policing since they are the lead investigator in all cause and origins and in half of the follow up investigations.

II. There is a pay and civil service differential between marshals and detectives (every fire marshal has to take a civil service exam to qualify for the position). This could create problems between the detectives and marshals who work together.

- III. Police detectives are sometimes called away from their units in the event of an emergency or a special occasion such as the Pope's visit to New York City. If this happens in a team policing system, many marshals could be left without partners. Fire marshals are not subject to this type of reassignment.
- IV. The work charts of the fire marshals and detectives conflict. Combining these two conflicting charts will be difficult and could cause administrative and managerial problems.
- V. Because the marshal will always be the lead investigator in the cause and origin in team policing, both the detective and marshal will sometimes be summoned to a Grand Jury or to testify in court. This will be true in the cases where the detective makes an arrest. In the non-team policing area the fire marshal who does the cause and origin also makes the arrest, so only he will be called to court.
- VI. Because fire marshals and police detectives can only be supervised by members of their respective departments, team policing will require joint supervision which is duplicative.
- VII. Perhaps the biggest objection stated to team policing is that many marshals feel that it is the beginning of a plan to give total control of arson investigations to the Police Department. The expansion of team policing may be viewed as a sign that the autonomy and scope of the fire marshals is slowly being dismantled. Thus, the implementation of team policing could severely demoralize the marshals.

Team policing was instituted in the Bronx on July, 19, 1982. This section provides figures for three months of Bronx team policing and projected figures based on that period. Fifteen month figures for the Brooklyn North team policing project as well as for the rest of the City will also be provided.

#### Explanation of Statistics

"Suspicious" fire statistics will be used as an indication of the workload of the investigators in all areas. This is actually a conservative statistic since all these investigators respond not only to suspicious fires but to all fires where there is a death or serious injury and fires of two alarms or more. However, since almost 90% of the workload is suspicious fires, these figures will be used for the three jurisdictions. Suspicious fire figures for the last week of October were not available at the time of this report. Figures for the last week in October are estimated based on the prior three weeks.

Since the evaluation is not concerned with the Fire Department's Red Cap program, the suspicious fires to which Red Cap investigators responded have been subtracted from the total suspicious fire statistics for the boroughs in which they operated.

Arson arrests are used as the measure of arrest activity. Arson arrests made by the Red Cap marshals have been eliminated from this report.

The number of investigators operating in each area is figured as follows:

There are 20 detectives and 13 fire marshals assigned to the Bronx team policing project. Of these, one detective and one fire marshal are permanently off the workchart to perform intelligence functions. Thus in total, 31 investigators participate in the Bronx team policing project.

There are 18 detectives and 14 fire marshals assigned to the Brooklyn North team policing project. Of these, one detective and one fire marshal are permanently off the workchart to do intelligence work leaving a total of 30 investigators in Brooklyn North.

Of the total of 204 fire marshals, 38 are stationed at their central headquarters. Of these, 5 perform arson investigations while 33 perform non-investigative functions.\* There are also 44 fire marshals in the Red Cap program which is not part of this evaluation. The two team policing projects have a total of 27 fire marshals. This leaves a total of 100 marshals who are assigned to investigate arsons in Manhattan, Queens, Staten Island and Brooklyn South. In the previous evaluation, the Fire Department reported that of this 100, there were 24 marshals assigned to their field bases who were clerical, light duty clerical, or on extended medical or terminal leave. Using the same figures for this report, the total number of fire marshals available for investigation in Man/Qns/S.I./Bklyn South becomes 78 since the Bronx team policing project utilizes 12 fire marshals, 8 fewer than the preceding investigative system. Assuming that these 8 marshals performed investigations in the Man/Qns/S.I./Bklyn South area during the months of August-October, the total number of marshals rises to 84. When this addition of extra marshals for the last three months is averaged with their manpower figures for the prior 12 months, the average number of marshals available for investigations over the 15 month period is 78.

\*As the Strike Force was informed by the Fire Department, for the initial evaluation of team policing.

	<u>BRONX</u>	<u>MAN/ONS/S.I./ BKLYN. SO.</u>	<u>BKLYN NO.</u>
Time Period	Aug.82-Oct.82	Aug.81-Oct.82	Aug.81-Oct.82
Suspicious Fires*(less Red Cap Fires)	435	4406	2094
%OCC/%VAC	45%OCC/55%VAC	73%OCC/27%VAC	55%OCC/45%VAC
Number of Investigators	31(19 det/12 f.m.)	78(f.m.)	30 (17det/13 f.m.)
No. Arson Arrests	15	207	93
Suspicious fires per investig. per month	4.68	3.77	4.65
Arrest per investig. per year**	1.9	2.1	2.5

\*Caseload for all these areas is actually a little higher than suspicious fires since all these investigators also respond to all fires where there is a death and serious injury and fires of 2 alarms or more. For purposes of comparison, however, suspicious fires are used.

\*\*Figures for the Bronx are projected on the three month figures and figures for the other two areas are distilled from the 15 month figures.

The area with the most suspicious fires, arrests and investigators is Man/Qns/S.I./Bklyn So. With 78 marshals investigating 4406 suspicious fires, each marshal has a caseload of 3.77 suspicious fires per month and an arrest rate of 2.1 per year. Of the suspicious fires in this area, 73% were in occupied and 27% in vacant buildings.

Brooklyn North has the next highest number of fires and investigators over the same 15 month period. The investigators here, along with Bronx investigators, have the highest caseload per month in the City, 4.65, and Brooklyn North investigators have the highest arrest rate per investigator per year in the City, 2.5. Moreover, this arrest rate is in an area where almost half the suspicious fires are in vacant buildings where the possibility of making an arrest is negligible.

The Bronx team policing project has been in operation for only three months. The most notable statistic here is that, prior to team policing in the Bronx, it took 20 marshals full time to perform cause and origin investigations in the Bronx (see Table II of the first evaluation). This figure has been reduced to twelve with team policing, freeing eight fire marshals for other investigations. The Bronx investigators have the highest caseload per month, 4.68, and the lowest arrests per investigator per year, 1.9. This arrest figure is, however, not only comparable with that of the marshals in the Man/Qns/S.I./Bklyn So. but is achieved in an area with proportionally twice as many vacant building suspicious fires. Additionally, the Bronx investigators have the highest caseload in the City. Also, the Bronx figures have to be considered preliminary since the project has been in existence only a little over three months.

Overall, then, the statistical results from team policing appear encouraging. The team policing areas have the highest caseloads per investigator and investigators in Brooklyn North team policing project have the highest arrest per investigator figure in the City.

The Bronx team policing investigators are also working in what is by far the most difficult area in the City in which to make arson arrests. Additionally, both the Bronx and Brooklyn North contain areas such as the South Bronx, Bushwick, Brownsville, and East New York which have tremendously high concentrations of vacant and burned out buildings. As slim as the chances for

Analysis and Recommendation

All of the above objections to team policing must, of course, be addressed in expanding this program city-wide.

Thus, it must be understood by the police detectives in team policing that although the marshal is the lead investigator in the cause and origin investigation, the detective must assist him in any way possible. This includes the often dirty and physically taxing labor which the most difficult cause and origin examinations entail. There are, of course, many cases in which the cause and origin does not require this kind of effort. However, on those that do, the detective must share in the physical labor. On especially difficult cases, team policing must be structured in such a way that other marshals as well as supervisors are available for assistance.

Any pay differential is unfair. This is obviously an issue which must be addressed through collective bargaining, but the Strike Force supports the notion that the marshals in this project should not be paid less than their police counterparts.

The fire marshals' workchart is indeed incompatible with the detective chart. Up to now, the detectives have altered their chart somewhat to roughly approximate that of the fire marshals. If team policing is instituted, an agreed-upon workchart will be created and policy recommendations will be made for the best investigative workchart.

Detectives are called away for special assignments infrequently. Nonetheless, provisions must be made for replacing a detective when this occurs.

Finally, the demoralizing effects of a team policing system must be addressed. Two points must be made explicit. First, the addition of police detectives to arson investigation in no way is a criticism of the marshals' skills or past performance. It is simply the opportunity to add, on a large scale basis, the expertise of police detectives. Second, these detectives are not replacing fire marshals nor is the Strike Force recommending a reduction in the number of marshals. Response to and immediate investigation of suspicious fires is an important but not the only role investigators can play in arson prevention and investigation. The addition of more detectives will afford the City the manpower to staff innovative anti-arson projects.

Nevertheless, the benefits of team policing should outweigh the problems involved. The opportunity to have a unified system of arson investigations, combined resources and intelligence gathering and an infusion of manpower into the city's arson investigation effort makes team policing worth implementing on a city-wide basis.

The City currently has two agencies with concurrent investigative jurisdiction over arson cases, the Police and Fire Departments. Both Departments have arson investigators who, while having some overlapping skills and experience, also have different but complementary expertise. Combining these individual talents and departmental resources, as 8 of the 9 largest cities have done when both the police and fire departments are involved in arson investigations, will result in a multiplicity of tangible evidence.

The City will have one unified system of arson investigation. The two systems which currently exist will be merged into one system with uniform recordkeeping, statistics, and intelligence gathering.

Separate or competing investigations will be eliminated. This will result in savings in investigator man hours spent on major cases which may currently be receiving investigative attention from both agencies. Additionally, the allocation of more detectives to the Police Arson Explosion Division will enable the Fire Department to use more fire marshals for special projects such as their highly successful Red Cap Program.

The institutionalized distrust and occasional hostility between the Police and Fire Departments ( which has significantly decreased in the last couple of years) will be eliminated. The team policing projects in Brooklyn North and the Bronx have shown that given the opportunity, these investigators can work together productively and comfortably.

The 15 month statistics for team policing in Brooklyn North are the best in the City. The figures for the Bronx, though not quite as good, are encouraging since these investigators have the largest caseload in the city and operate in a borough where over half of the suspicious fires occur in vacant buildings. Additionally, discussions with prosecutors from various counties indicated an unequivocal preference for team policing, although no official positions were solicited. Therefore, the Strike Force is recommending the institution of team policing city-wide. It is justified by the statistics, prosecutor's preferences, and especially by the many other benefits which will accrue from its institution, as discussed above. Team policing on a city-wide basis should be operative on or about January 1, 1967.

Approximately 140 investigators, 70 marshals and 70 detectives, will be needed for a city-wide institution of team policing. Thus, 30 detectives will have to be reassigned to the Arson Explosion Division to expand team policing city-wide. The addition of these 30 detectives will allow the Fire Department to reassign up to 50 fire marshals for other projects.\* The Police and Fire Departments, with the Arson Strike Force, must work out the details of how the project will be instituted, how supervision will work and the exact numbers of investigators involved. Additionally, the problems of conflicting charts, pay differentials, replacement investigators, and the police role in cause and origin investigations will be addressed and resolved.

As the last report stated, New York City fire marshals and police detectives are the best in the country and combining their talents should be viewed in a positive light. With a city-wide team policing system, New York City will finally have one unified system of arson investigation.

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