Fewer Smaller Cases

A Review of Trends in Federal White-Collar Prosecutions from 2017 to 2024

BY ROGER B. HANDBERG

t is sometimes said that the COVID-19 pandemic impacted everything. White-collar prosecutions were no exception. In the three years prior to the pandemic, the US Department of Justice (DOJ) routinely charged more than 9,000 defendants a year in fraud cases. After the pandemic, the number of those prosecutions dropped to between 6,400 and 8,000 defendants.

However, that does not tell the full story. Although the number of fraud defendants has declined, several indicators suggest the cases being prosecuted are larger. The amount of restitution ordered in federal criminal prosecutions has been at historic levels over the past three years, and average restitution, median restitution, and median fraud loss all have increased.

A review of sentencing data reveals that two trends are operating in tandem: Fewer cases with lower fraud losses are being prosecuted, while the number of larger cases has rebounded to pre-pandemic numbers. In other words, the decline in fraud cases has not

ROGER B. HANDBERG is a shareholder at GrayRobinson, where he brings over two decades of proven frontline prosecutorial and litigation experience to the firm's criminal and white-collar defense practice. Prior to joining GrayRobinson, Handberg was a career federal prosecutor and specialized in the investigation and prosecution of public corruption and white-collar crime cases.

Chart 1
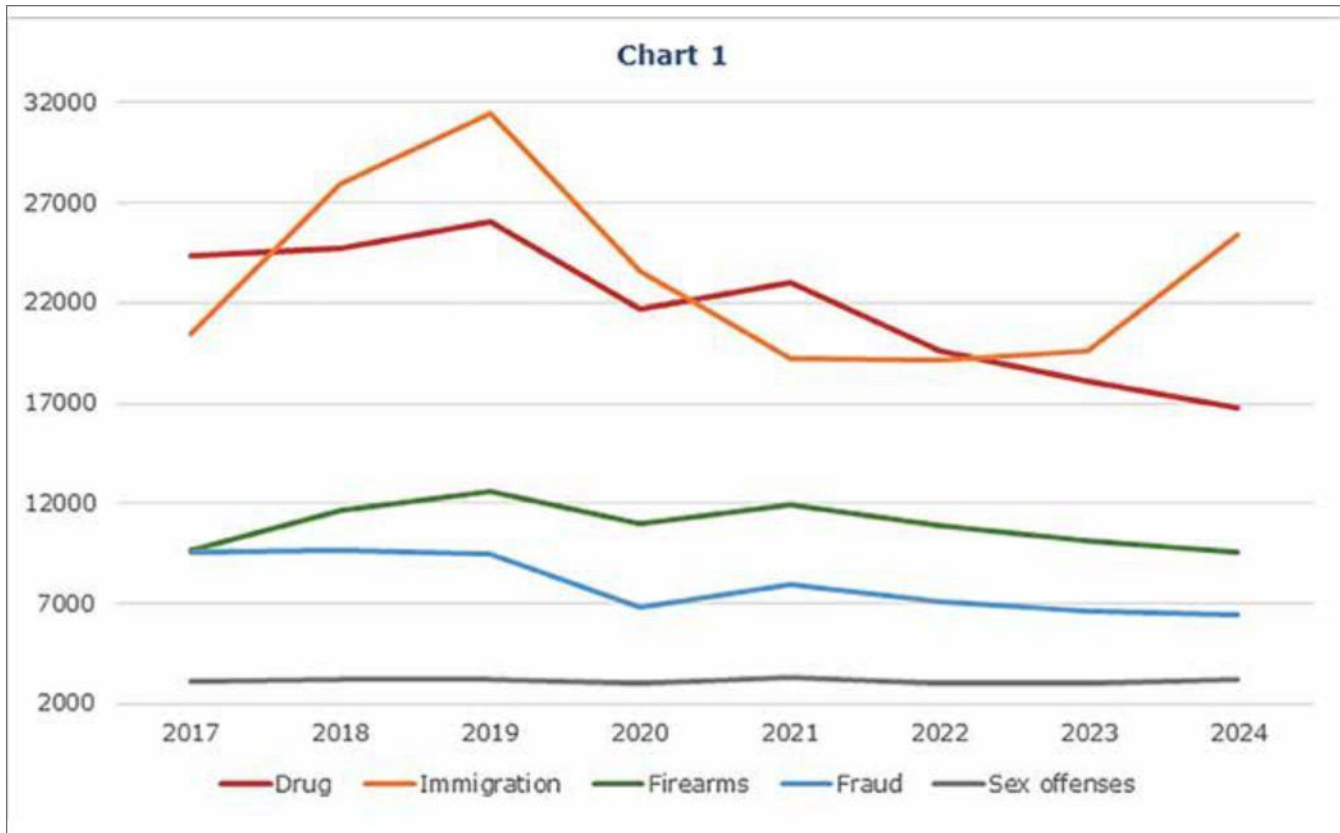
been in larger cases, but in fewer cases being pursued with lower amounts of loss.

This article will summarize some of the publicly available data regarding fraud prosecutions over the past eight years that reflect these trends.

Trends in All Cases from 2017 to 2024

In most years, the top five categories of cases prosecuted by the DOJ are immigration, drug trafficking, firearms, fraud/theft/embezzlement (fraud), and sex offenses (usually child exploitation). The Administrative Office of the US Courts publishes data regarding criminal, civil, and appellate cases. A review of those data shows that the top two categories of prosecutions are immigration and drug trafficking cases, totaling more than half of all defendants in most years. The next three categories of cases are firearms, fraud, and sex offenses, usually in that order.

For purposes of this article, the data will be presented by fiscal year. The federal fiscal year runs from October 1 to September 30. The data also will be presented in terms of defendants as opposed to cases, which will better allow for comparison to sentencing data from the U.S. Sentencing Commission.

As for the time period, this article will review, except as otherwise noted, an eight-year period, from 2017 to 2024. This will allow for a comparison of time periods before and after the COVID-19 pandemic.

The first year impacted by the pandemic was 2020. Prior to that, the number of defendants being charged in federal court from 2017 to 2019 increased by about 20% due to increases of 54% and 31% in immigration and firearms cases, respectively. In 2020, the number of defendants charged in federal court dropped by 20%. This decrease did not impact all categories of cases equally. Firearms and sex offense cases experienced small decreases, with the largest decreases seen in fraud (27%), immigration (25%), and drug trafficking (17%) prosecutions.

After 2020, the number of firearms and drug trafficking cases rose in 2021 and then decreased in every year after that. Sex offense cases remained around the same level (between 3,038 and 3,310), and immigration cases were consistently around 19,000 defendants until 2024, when the number of those prosecutions increased by 30%. Chart 1 above summarizes the fluctuations in the different categories of cases from 2017 to 2024.
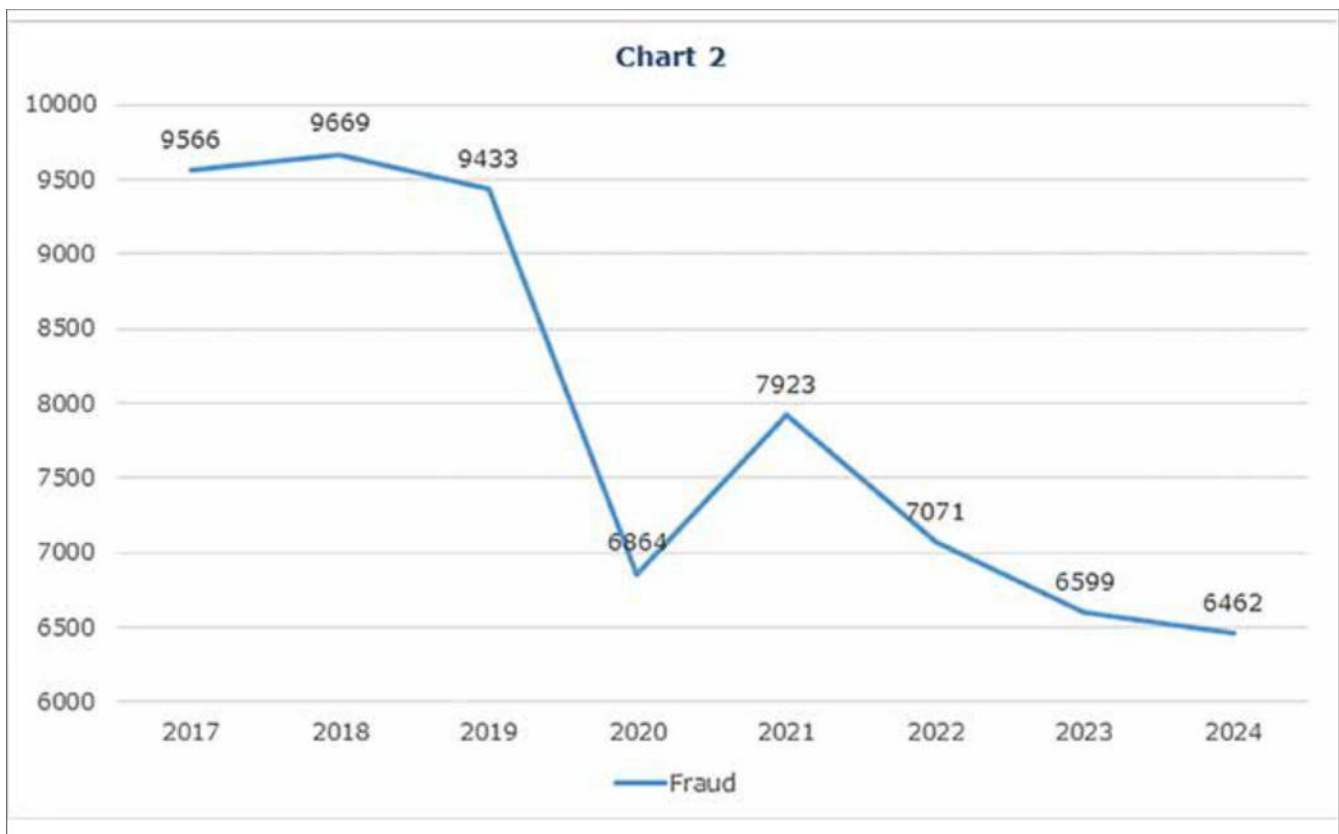
Drop in Overall Fraud Cases

During the eight-year period from 2017 to 2024, fraud cases experienced the largest percentage drop in terms of defendants charged. In 2017, 9,566 defendants were charged with fraud offenses. By 2024, that number had decreased to 6,462 defendants, a decline of 32%. As illustrated in Chart 2 below, this decrease consisted of a drop in the first year of the COVID-19 pandemic, followed by an increase in 2021, and decreases each year after that.

Number of cases, however, is not the only measure of white-collar prosecutions. A qualitative aspect must be considered. Consider the example of these two defendants: a defendant charged with a $100 theft of government property in a single incident and a defendant indicted for a $100 million Ponzi scheme with 1,000 victims that took place over 10 years. In terms of the number of fraud defendants, both cases generate the same statistical result: one defendant charged in a federal fraud case. At the same time, however, the cases differ in many respects, including victim impact, prosecutorial and investigative resources required to bring the cases, and sophistication, among others.

The question arises as to which publicly available measures allows for a qualitative comparison between fraud cases. One possibility is to compare the amount of restitution or loss.

There are several benefits to such an approach. Restitution and loss amounts in fraud cases are regularly compiled by the U.S. Sentencing Commission, which allows for comparisons between different years. The financial impact of a fraud is also a well-recognized barometer of the possible significance of a case. In fact, the Principles of Federal Prosecution in the Justice Manual specifically recognize that the amount of economic harm is a factor to be considered in determining whether there is a "substantial federal interest" that would be served by a federal prosecution: "The impact of an offense on the community in which it is committed can be measured in several ways: in terms of economic harm done to community interests[.]" Just. Manual § 9-27.230.

There are limitations, however, to focusing on restitution and loss amounts. One such limitation is that the restitution and loss amounts compiled by the Sentencing Commission cannot be directly linked to data obtained by the Administrative Office

Chart 2 — Fraud: 2017: 9566; 2018: 9669; 2019: 9433; 2020: 6864; 2021: 7923; 2022: 7071; 2023: 6599; 2024: 6462

of the U.S. Courts regarding the number of defendants charged in a particular year. This is because a case may be charged in a different year than when sentenced. For example, a defendant indicted for a fraud case in 2017 may not be sentenced that year. And during the COVID-19 pandemic, some sentencings were delayed significantly. Another limitation is that restitution and loss data do not include any case that results in an acquittal or a dismissal. Christine Kitchens, *Commission Collection of Individual Sentencing Data*, U.S. Sent'g Comm'n Research Notes, no. 1, Feb. 2025, at 3 ("Records of any federal criminal case in which the defendant was acquitted of all charges, or where all charges were dismissed are not maintained by the Commission.").

Due to these limitations, this article will not seek to compute the amount of restitution or loss that resulted from cases that were charged in a particular year. Instead, it will use data about restitution or loss to identify possible trends across time. Three data sources will be analyzed: restitution, median fraud loss, and distribution of fraud losses in cases sentenced under U.S. Sentencing Guidelines Manual (U.S.S.G.) § 2B1.1. A review of those measures establishes that the average and median amounts of

restitution in fraud cases have increased dramatically over time, that the median fraud loss has more than doubled, and that fewer fraud cases with lower amounts of loss are being sentenced (which corresponds to fewer of those cases being prosecuted).

Total Restitution Awards Rise to Historic Levels In 2024, federal prosecutions of individuals resulted in the imposition of almost $13.5 billion in restitution. According to the Sentencing Commission, that was "the highest amount in more than two decades." U.S. Sent'g Comm'n, *2024 Annual Report*. Nor was 2024 an anomaly. Instead, it was the third year in a row where more than $13 billion in restitution was ordered in cases involving prosecutions of individuals. U.S. Sent'g Comm'n, *Sourcebooks of Federal Sentencing Statistics* (2022) [hereinafter [year] *Sourcebooks*], tbl. 17; 2023 *Sourcebooks*, tbl. 17.

By comparison, the total restitution imposed between 2017 and 2021 was significantly less. The highest year in that period was 2017, which had approximately $10.8 billion in restitution and fines (for that year, the Sentencing Commission combined restitution and fine awards in its annual Sourcebook). 2017 *Sourcebooks*, tbl. 15. After 2017, the amount of

Chart 3
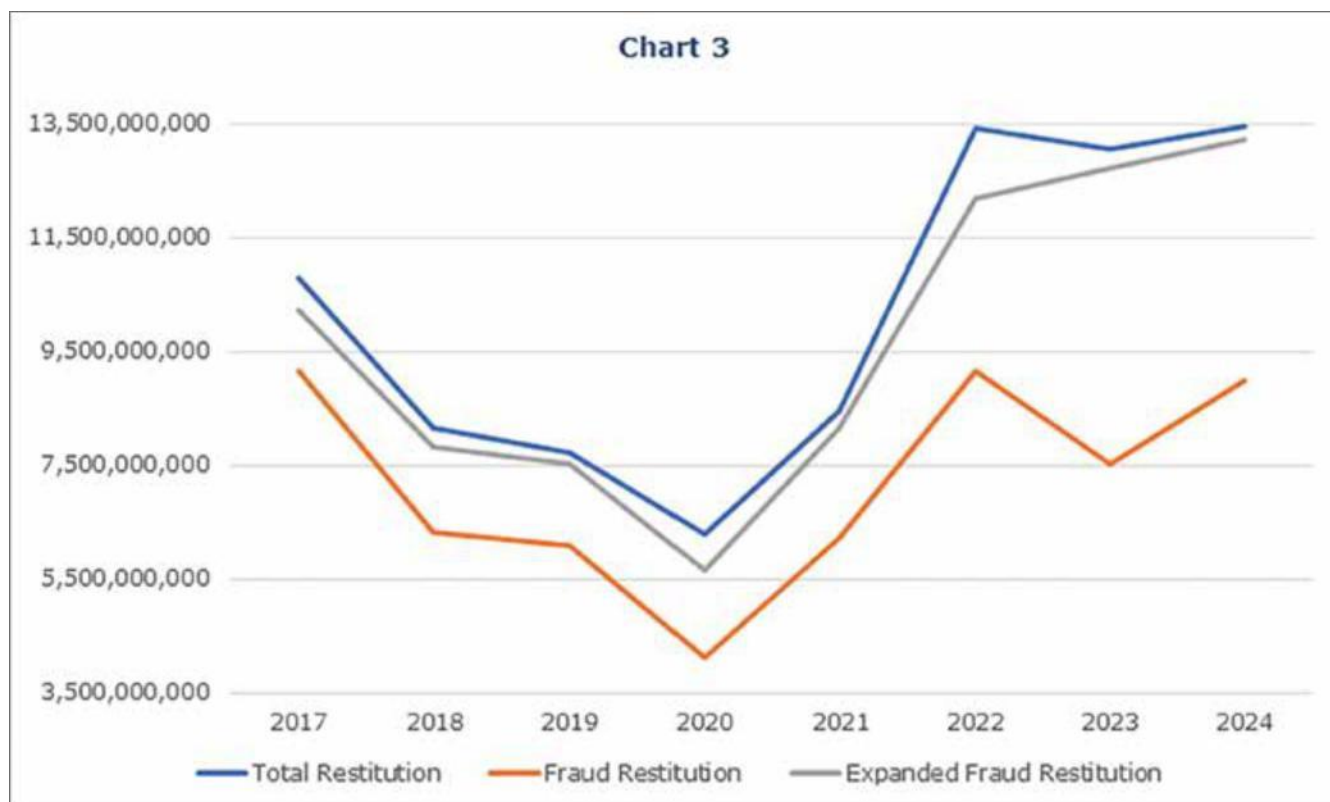
restitution decreased yearly until it started to rise in 2021. The end result is that the amount of total restitution imposed in 2022, 2023, and 2024 was more than 20% greater than in 2017 (even taking into account the fact that 2017 included restitution and fines) and was at least 50% greater than each of the years between 2018 and 2021. *Id.*; *see also* 2018–2024 *Sourcebooks*, tbl. 17.

In any year, the vast majority of restitution ordered in criminal cases is in fraud, bribery, money laundering, and tax prosecutions (expanded fraud cases). The pattern for the restitution ordered for that subset of cases was similar to the one seen for total restitution. The amount declined from 2017 through 2020 and started to rise again in 2021, with 2024 reflecting a 29% increase from 2017 (even taking into account that the 2017 amount included restitution and fines). 2017 *Sourcebooks*, tbl. 15; 2018–2024 *Sourcebooks*, tbl. 17.

Fraud cases experienced a different pattern. In 2017, the amount of restitution and fines for those cases was approximately $9.2 billion, which is comparable to the amount of restitution imposed in 2022 and 2024. Those three years were the top years for the time period, with the bottom four years being from 2018 to 2021. 2017 *Sourcebooks*, tbl. 15;

2018–2024 *Sourcebooks*, tbl. 17. Chart 3 on page 20 illustrates the trends in total restitution, expanded fraud, and fraud cases.

In addition to total restitution, the Sentencing Commission's annual *Sourcebooks* includes data regarding the average and median amounts of restitution ordered in fraud cases. Because the 2017 *Sourcebooks* does not separately report restitution and does not include any information about average or median restitution, this portion of the article will omit that year from any comparisons about average and median restitution.

The trends in average and median restitution for fraud cases were similar for both measures between 2018 and 2024. The four highest years for both measures were the most recent years (2021 through 2024), with 2024 reflecting a 67% increase in average restitution from 2018 and a 60% increase in median restitution from 2018. 2018–2024 *Sourcebooks*, tbl. 17.

The increase in median restitution is informative. In general, a median is the middle point of a set of numbers, in which half the numbers are above and half are below. It is helpful to use a median when analyzing a wide range of numbers because it is less likely to be impacted by outliers. With respect to restitu-

Chart 4
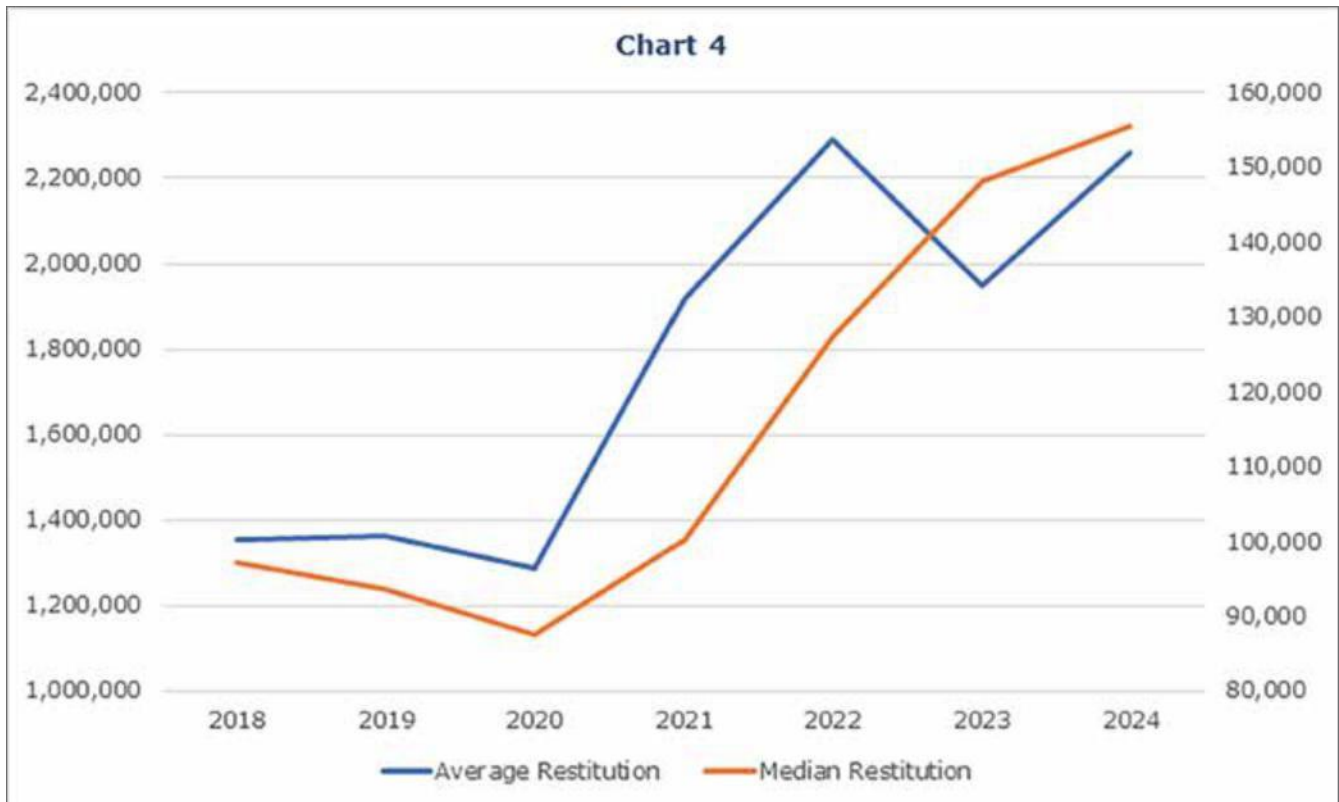
tion, the median amount of restitution in fraud cases increased every year from 2020 to 2024. 2020–2024 *Sourcebooks*, tbl. 17. This trend mirrors what was seen with average restitution, and it is consistent with the conclusion that restitution awards, as a group, have increased over time. Chart 4 on page 21 shows the rise in average and median restitution in fraud cases.

Doubling of Median Fraud Loss
Starting in 2018, the Sentencing Commission began reporting information in its annual *Sourcebooks* regarding the average and median fraud losses in economic crimes cases. Fraud loss differs from restitution because fraud loss is the greater of actual loss or intended loss, while restitution is more akin to actual loss. *See generally United States v. Orillo*, 733 F.3d 241, 244 (7th Cir. 2020) (noting that "the restitution analysis differs from that of the loss amount" and "[t]he amount of restitution is limited to the actual losses caused by the specific conduct underlying the offense"). Fraud loss is used in determining a defendant's offense level, with larger fraud losses often resulting in higher offense levels (and often higher advisory sentencing guidelines ranges).

Between 2018 and 2024, the Sentencing Commission reported average and median loss data for individuals sentenced pursuant to Chapter Two, Part B (Basic Economic Offenses), of the Sentencing Guidelines. For those defendants, the average fraud loss fluctuated from year to year with significant swings during that period. Average fraud loss in economic offense cases increased 34% from 2018 to 2019. It then decreased 77%, increased 184%, increased 25%, decreased 37%, and decreased 22%. The highest average fraud loss was in 2019, at $6.2 million. The two lowest years were 2024 at $2.6 million and 2021 at $1.4 million. 2018–2024 *Sourcebooks*, tbl. E-6.

Data about median loss presents a more discernible pattern. After decreasing from 2018 to 2020, the median fraud loss for economic offense cases increased yearly. By 2024, the median fraud loss was $138,894, more than double the median fraud loss in 2018. 2018–2024 *Sourcebooks*, tbl. E-6.

A similar pattern also can be seen in the median fraud loss for those cases sentenced under the fraud sentencing guideline used in most white-collar sentencings, U.S.S.G. § 2B1.1. *See generally* 2024 *Sourcebooks*, fig. E-1 (noting that 75.2% of economic offense

Chart 5
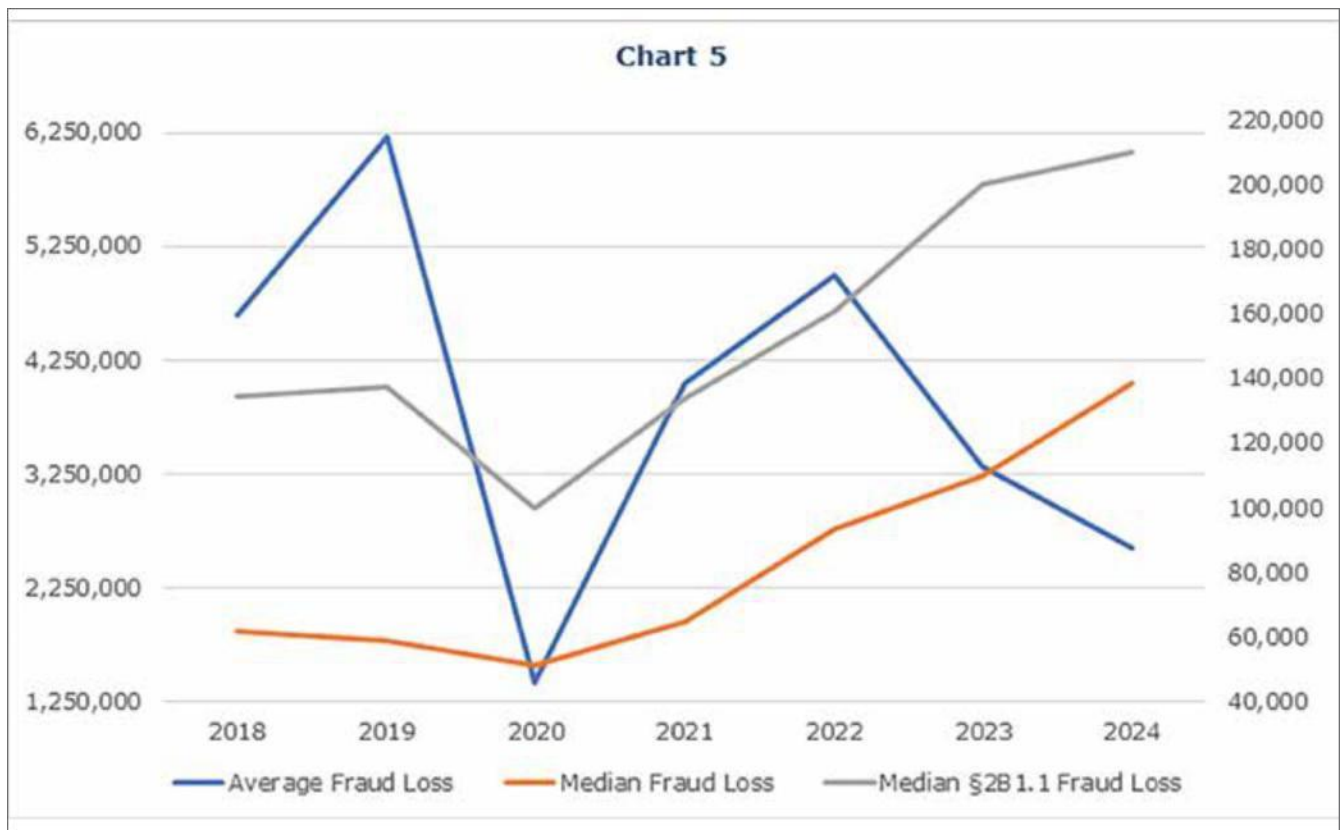
cases were sentenced under this guideline). The median fraud loss in those sentencings increased every year from 2020 to 2024, with the three highest years being 2022, 2023, and 2024. The 2024 median fraud loss of $210,410 was approximately 57% greater than the median fraud loss in 2018. 2018–2024 *Sourcebooks*, tbl E-6. Chart 5 on page 22 illustrates the trends in average and median fraud losses.

**Distribution of Fraud Loss Amounts: More Larger Cases and Fewer Smaller Ones**

These increases in median fraud loss also can be seen in the data regarding the distribution of fraud loss amounts. Every year, the Sentencing Commission provides a breakdown of the number of defendants sentenced in each of the U.S.S.G. § 2B1.1 loss catego- ries. There are 16 categories that correspond to the fraud loss table in U.S.S.G. § 2B1.1. The first category is $6,500 or less. The last category is more than $550 million, with 14 categories in between.

To analyze these data, this article will group the loss ranges into one of three categories: lower fraud loss, middle fraud loss, and higher fraud loss. Lower fraud loss will consist of the lowest four loss ranges:

$0 to $95,000 in loss. Middle fraud loss will consist of the next four loss ranges: more than $95,000 to $1.5 million. Higher fraud loss will consist of the remaining eight loss ranges: more than $1.5 million and above.

In 2017, there were 2,566 lower fraud loss cases, 2,316 middle fraud loss cases, and 920 higher fraud loss cases. U.S. Sent'g Comm'n, *Interactive Data Analyzer: Economic Crime: Number of Sentenced Individuals in Each §2B1.1 Loss Table Category*. After that, the number of lower fraud loss cases declined every year except one (2022). 2018– 2024 *Sourcebooks*, fig. E-2. In 2024, lower fraud loss cases reached their lowest level over the eight-year period, with 1,777 cases. This represents an overall 31% decrease from 2017 to 2024.

Middle fraud loss cases experienced a decrease until 2022, when the number of those cases began to rise. In 2023 and 2024, the increases in middle fraud loss cases, coupled with decreases in lower fraud loss cases, resulted in middle fraud loss cases overtaking lower fraud loss cases as the category with the most sentenced defendants. 2023–2024 *Sourcebooks*, fig. E-2. In 2023, the difference in those two categories was 180 defendants (2,066 compared to 1,886). By 2024, that difference increased to more than 400 defendants

Chart 6
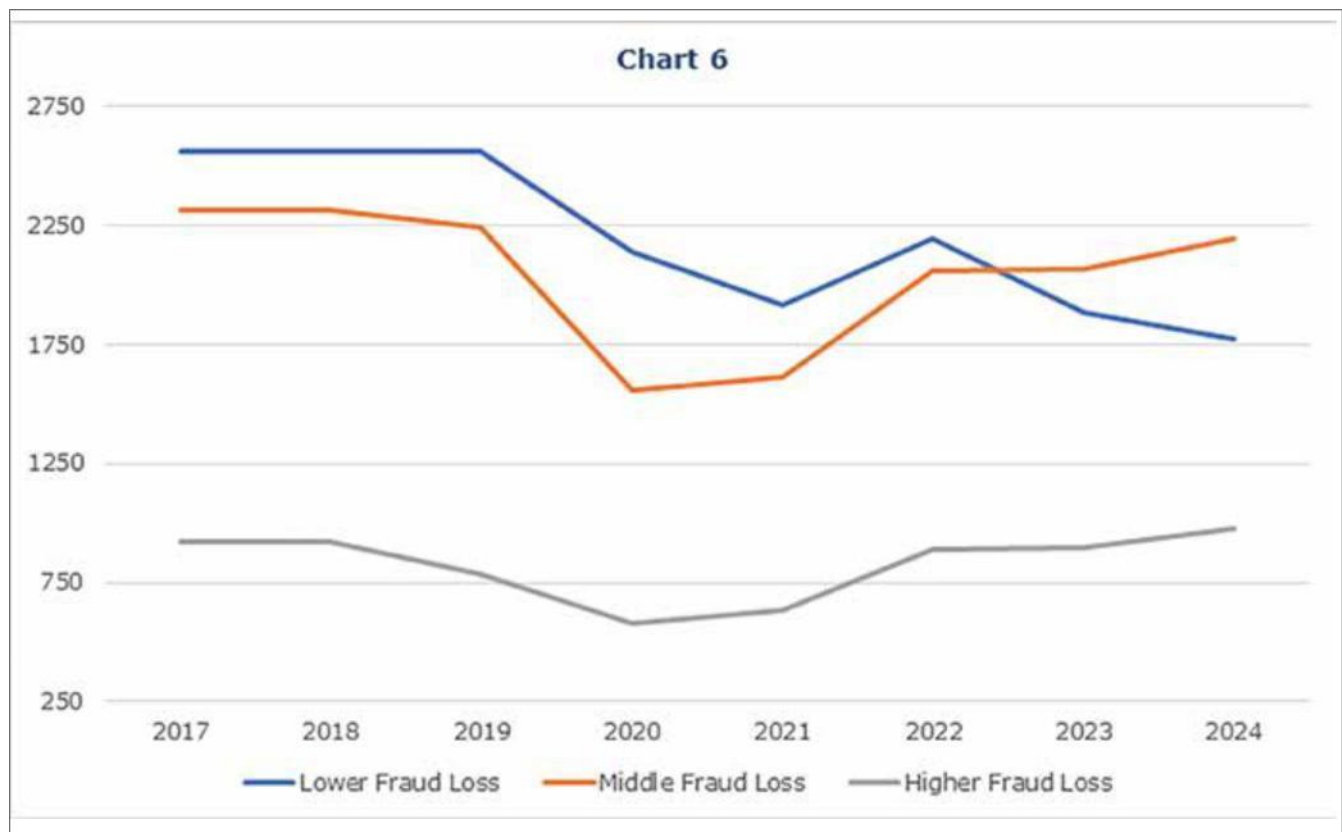
(2,197 compared to 1,777).

Higher fraud loss cases also saw a growth in their numbers. The number of higher fraud loss cases declined from 2017 to 2020 and increased every year after that. In 2024, there were 976 higher fraud loss cases,

> *Lower fraud loss cases were at their lowest level on a percentage basis in 2023 and 2024, the same period when middle fraud loss cases and higher fraud loss cases were at their highest levels.*

the largest number of such cases over the eight-year period. *Interactive Data Analyzer*, *supra*; 2018–2024 *Sourcebooks*, fig. [-2. Compared with the next highest year (2017), higher fraud loss cases were up 6%. Chart 6 on page 23 shows the trend lines for the total cases for the three fraud loss categories.

Combined, these sentencing data establish that, over time, the number of higher loss fraud cases has rebounded to pre-pandemic levels and that the decrease in overall cases corresponds to a reduction in sentencings with lower loss amounts. These trends also can be seen in reviewing the changes in the relative proportion of cases in each category over time. Lower fraud loss cases decreased from 44.2% of all U.S.S.G. § 2B1.1 cases in 2017 to 35.9% in

2024. By contrast, middle fraud loss cases rose from 39.9% in 2017 to 44.4% in 2024, and higher fraud loss cases increased from 15.9% in 2017 to 19.7% in 2024. The net effect of these trends is that lower fraud loss cases were at their lowest level on a percentage basis in 2023 and 2024, the same period when middle fraud loss cases and higher fraud loss cases were at their highest levels. *Interactive Data Analyzer*, *supra*; 2018–2024 *Sourcebooks*, fig. [-2. Chart 7 below illustrates these trends.

Conclusion
When read together, these different sources of data tell a similar story. The total number of fraud cases declined from 2017 to 2024, but sentencing data

Chart 7
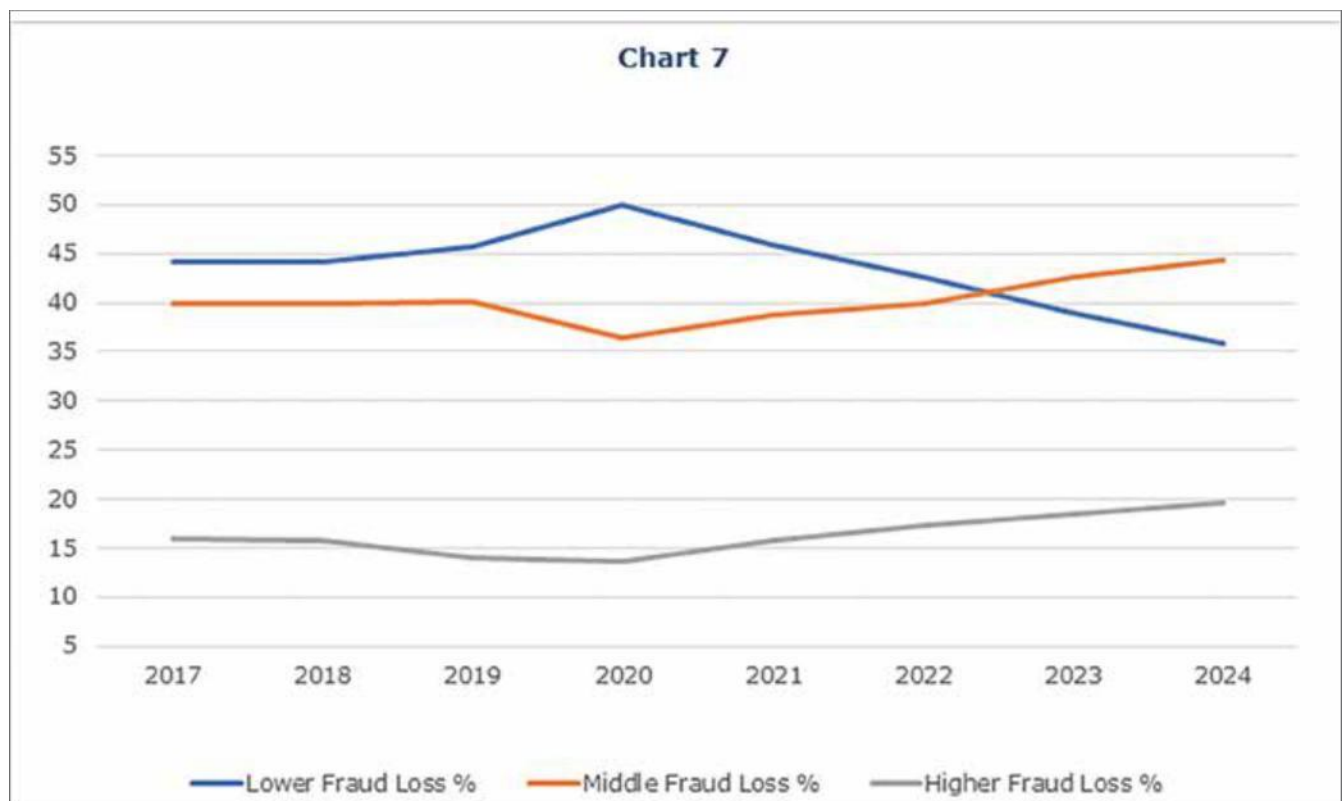
establish that much of that decrease was in cases with lower loss amounts. More large fraud loss cases were sentenced in 2024 than in any other year over the eight-year period, and middle fraud loss cases overtook lower fraud loss cases in 2023 and 2024. This growth in large and middle fraud loss cases contributed to significant increases in average restitution, median restitution, and median loss amounts. And they coincided with a significant decline in the sentencings of lower fraud loss cases, which resulted in an overall higher proportion of middle fraud loss and higher fraud loss cases on a percentage basis.

This result is not entirely unexpected. During the COVID-19 pandemic, prosecutors and investigative agencies had to adjust to an unprecedented situation. Court hearings were held with much less frequency. Jury trials decreased. Grand jury sessions were limited. Investigative activity was curtailed. *See generally* Roy Germano et al., *COVID-19 and the U.S.*

District Courts: An Empirical Investigation (2022) (concluding that "the data suggest that COVID-19 disrupted and delayed federal court operations in ways that could still be felt two years after the onset of the pandemic"). Under these circumstances, it is logical that prosecutors and law enforcement focused on cases with larger monetary losses. By prioritizing those cases, prosecutors and law enforcement were able to dedicate their limited resources to those cases that, all other things being equal, would do the most to protect the public, do justice for victims, and hold offenders accountable.

In summary, the decline in the total number of white-collar cases only tells part of the story. A review of the publicly available data paints a more nuanced picture of the impact that the COVID-19 pandemic had on white-collar prosecutions. A continued review of those data will help to illuminate the post-pandemic trends in those cases. ∎